Attachment 3

STATE OF OHIO

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Intrado Communications Inc. For Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North, Inc.	))))))	Case No. 08-198-TP-ARB

REPLY BRIEF OF

VERIZON NORTH INC.

Dated: March 6, 2009

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I. INTRODUCTION

Intrado's Initial Brief, like its earlier filings in this case, is long on ill-founded and irrelevant policy arguments and short on the law. Although Intrado has petitioned for interconnection under section 251(c) of the Communications Act of 1934 ("Act") – and only section 251(c) – it openly seeks interconnection arrangements that are unlike any interconnection arrangements Verizon has with any other carrier and that have nothing to do with Verizon's duties under section 251 (or any other law). There is no law to support, let alone require, adoption of Intrado's unprecedented and anticompetitive proposals. Section 251(c) does not distinguish between interconnection for "emergency services" and interconnection for other services, and Intrado can point to nothing that says it does.

Indeed, in Intrado's arbitrations with Embarq and Cincinnati Bell Telephone Company ("CBT"), this Commission ruled that Intrado is not entitled to section 251(c) interconnection when it handles the ILECs' end users' 911 calls, but must instead obtain commercial terms for such interconnection under section 251(a) of the Act.[1]

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[1] *Petition of Intrado Comm., Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Embarq*, Arb. Award, Case No. 07-1216-TP-ARB, ("*Embarq/Intrado Order*"), at 33 (Sept. 24, 2008); *Petition of Intrado Comm., Inc. for Arbitration Pursuant to Section 252(b) of the Comm. Act of*

The Florida Commission found that Intrado's 911/E911 services are not "telephone exchange service" or "exchange access" that would entitle it to section 251(c) interconnection. 47 U.S.C. § 251(c)(2)(A). The Commission, therefore, dismissed Intrado's arbitrations with Embarq and AT&T and advised Intrado that it could provide its services through the use of commercial agreements.[2] Verizon expects the same result in its arbitration with Intrado in Florida.

Since the parties filed their Initial Briefs, the Administrative Law Judges ("ALJs") in Intrado's arbitration with AT&T in Illinois have also issued a Proposed Arbitration Decision concluding, as the Florida Commission did, that Intrado's 911 services do not entitle it to section 251(c) interconnection:

> [T]he Commission is neither willing nor authorized to expand the specific provisions of the law beyond their apparent meaning. The Congress did not say that any market entrant is entitled to interconnection under subsection 251(c)(2). Rather, it described the entrants entitled to such interconnection with particularity. Irrespective of this Commission's interest in expanding competition, we cannot exceed the limits established by the Congress.[3]

There was, therefore, no need for the ALJs to reach the parties' disputes about proposed interconnection agreement terms, because those disputes were "rendered moot and superfluous"

1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Tel. Co., Arb. Award, Case No. 08-537-TP-ARB, ("*CBT/Intrado Order*"), at 15 (Oct. 8, 2008).

[2] *See Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with BellSouth Telecomm., Inc. d/b/a AT&T Florida, Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C.*, Final Order, Order No. PSC-08-0798-FOF-TP (Dec. 3, 2008) ("*Fla. AT&T/Intrado Order*") (attached to Verizon's pre-filed Testimony as Exhibit 1.6), at 7; *Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Embarq Florida, Inc., Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, and Section 364.162, F.S.*, Final Order, Order No. PSC-08-0799-FOF-TP (Dec. 3, 2008) ("*Fla. Embarq/Intrado Order*") (attached to Verizon's pre-filed Testimony as Exhibit 1.7), at 8. On March 3, the Florida Commission denied Intrado's petitions for reconsideration of the Commission's Orders dismissing Intrado's petitions for arbitration.

[3] *Petition for Arbitration Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Illinois Bell Tel. Co.*, Proposed Arb. Decision, Docket No. 08-0545 (Feb. 13, 2009) ("*Ill. Proposed Order*") (supplied as Attachment 1), at 18.

by the conclusion that Intrado is not entitled to section 251(c) interconnection. (*Ill. Proposed Order* at 21.) The procedural schedule in Verizon's arbitration with Intrado in Illinois has been suspended pending Commission action on the ALJs' proposed order in the AT&T/Intrado arbitration.

The same threshold issue of Intrado's entitlement to section 251(c) interconnection is now before the FCC's Wireline Competition Bureau in Intrado's consolidated Virginia arbitration with Embarq and Verizon.[4] In a status conference held with the FCC Staff on January 30, 2009, the Staff made clear that it would decide the threshold issue first for both Embarq and Verizon, both of which have argued that Intrado is not entitled to section 251(c) interconnection. The FCC Staff also stated that its target date for deciding the Verizon/Embarq/Intrado arbitration is May 2 of this year. Therefore, the most efficient course would be for this Commission to receive the FCC Bureau's guidance before issuing a ruling in this case. Indeed, Verizon and Intrado have already agreed to hold their Delaware and North Carolina arbitrations in abeyance pending the Bureau's decision.

If the Commission, however, wishes to rule on Intrado's petition here before the FCC Bureau rules, it should decline to consider the substantive issues and advise Intrado to pursue negotiation of a commercial agreement with Verizon. This is the only proper course, given the Commission's earlier decisions that Intrado is not entitled to section 251(c) interconnection for its 911 services. The Commission cannot convert this proceeding into an arbitration under

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[4] *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively, Embarq)*, WC Docket No. 08-33; *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon)*, WC Docket No. 08-185 (consolidated by Order released Dec. 9, 2008, FCC No. DA 08-2682).

section 251(a) of the Act. As Verizon explained in its Initial Brief, this arbitration is not like Intrado's arbitrations with Embarq and CBT, where the Commission imposed interconnection terms under section 251(a). Unlike Embarq, Verizon has not sought section 251(a) interconnection and does not make a practice of including section 251(a) terms in its section 251(c) interconnection agreements. And unlike CBT apparently did, Verizon has not proposed any contract language contemplating interconnection on Intrado's network (which would not be section 251(c) interconnection, which must occur on the ILEC's network).

To the extent Intrado suggests (albeit without expressly stating) that the Commission may analyze Intrado's proposals under section 251(a) (Intrado Br. at 12), this suggestion is wrong – as well as astonishing, given Intrado's insistence that analyzing its interconnection proposals under any provision other than section 251(c) would be unlawful. In its arbitration with CBT, for instance, Intrado told the Commission that "Section 251(c) applies *whenever* a competitor like Intrado Comm seeks interconnection from an ILEC."[5]

Leaving aside Intrado's credibility problem, while Intrado is correct that "arbitration is permitted for provisions outside of 251(b) and 251(c) in certain circumstances" (*id.*), those circumstances are not present here. As the Fifth Circuit made clear in the *CoServ* case Intrado cites, a state Commission may arbitrate issues outside of the ILEC's obligations under section 251(b) and (c) ***only if the parties agreed to include those issues in their negotiations***:

> We hold, therefore, that where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by *§ 251(b) and (c)*, those issues are subject to compulsory arbitration under *§ 252(b)(1)*. The jurisdiction of the PUC as arbitrator is not limited by the terms of *§ 251(b) and (c)*; instead, it is limited by the actions of the parties in conducting voluntary

[5] *Petition of Intrado Comm for Arbitration of Application for Rehearing of Intrado Communications Inc. Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Tel. Co.*, Application for Rehearing of Intrado Comm. Inc., Case No. 08-537-TP-ARB, at 4 (filed Nov. 7, 2008).

> negotiations. It may arbitrate only issues that were the subject of the voluntary negotiations. The party petitioning for arbitration may not use the compulsory arbitration provision to obtain arbitration of issues that were not the subject of negotiations.[6]
>
> *CoServ* at 487 (emphasis in original).

Intrado is suggesting that the Commission should do in this case exactly what the *CoServ* Court said state commissions could not do – that is, force Verizon to arbitrate issues that were not the subject of negotiations, and that are not related to Verizon's duties under sections 251(b) and 251(c). Intrado did not seek negotiation of any section 251(a) terms in negotiations, so Verizon certainly could not have agreed to arbitrate any such terms. Throughout negotiations and this arbitration, Intrado has insisted on section 251(c) interconnection, and only section 251(c) interconnection. The parties' legal arguments have, therefore, been framed in terms of section 251(c), with Intrado contending that section 251(c) supports its interconnection proposals and Verizon explaining why section 251(c) does not support Intrado's proposals. Neither party has analyzed Intrado's proposals in terms of section 251(a) or taken any positions with respect to the legal standards or the procedures that might apply under section 251(a). *CoServ* confirms the law, cited in Verizon's Initial Brief, precluding the Commission from arbitrarily imposing section 251(a) terms that no one negotiated and no one asked for.[7]

The Commission must consider Intrado's proposals under section 251(c) and, if they are not supported by section 251(c), Intrado's arbitration petition must be dismissed and Intrado should be advised to seek a commercial agreement with Verizon. Verizon stands ready to

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[6] *CoServ Limited Liability Corp. v. Southwestern Bell Tel. Co., P.U.C. of Texas, et al.*, 350 F.2d 482, 487 (5th Cir. 2003) (emphasis in original).

[7] See Verizon Initial Br. at 3-4, *citing* 47 U.S.C. § 251(c)(1); *Sprint v. Pub. Util. Comm'n of Texas, Order and Brazos Tel. Coop., Inc.*, Case No. A-06-CA-0650-SS, 2006 U.S. Dist. LEXIS 96569 (Aug. 14, 2006), at 16 (appended to Verizon's Initial Br. as Attachment 1).

negotiate such an agreement with Intrado and remains willing to offer Intrado interconnection arrangements that are comparable to the interconnection arrangements Verizon has in place today with competing local exchange carriers.

Verizon's positions on the specific issues in this arbitration are offered only in the event the Commission decides to go forward, despite Intrado's lack of entitlement to section 251(c) interconnection for its 911 services, despite the fact that no one has asked the Commission to arbitrate anything under section 251(a), and despite the pendency of the FCC Bureau's ruling in the parties' arbitration there.

If the Commission reaches the merits of Intrado's interconnection proposals, it must, as Verizon explained in its Initial Brief, reject those proposals as unreasonable and anticompetitive under any analysis. Nothing entitles Intrado to demand that Verizon interconnect with Intrado at multiple points on Intrado's network, as far from Verizon facilities as Intrado wishes, or to dictate that Verizon establish multiple direct trunks to those multiple POIs, or to forbid Verizon and other carriers from using Verizon's selective routers to sort traffic to the appropriate PSAP. As Verizon has explained, Intrado's extreme plan is rooted in Intrado's objective of shifting as much of its network costs to Verizon as it can, so Intrado can price its overall service more attractively and gain an unfair competitive advantage. Indeed, Intrado has never denied the fact that its proposal would force Verizon to bear the cost of its 911 network, and, in fact, Intrado openly recommends that the retail customers of Verizon and other carriers bear the costs of Intrado's network. (*See, e.g.*, Intrado Ex. 1.0 at 20-21; Verizon Ex. 1.0 at 51-52.)

As Verizon has emphasized, Intrado can provide its services using any kind of network it wishes (as long as it is consistent with Ohio's 911 statutes and regulations), but Intrado cannot force Verizon and its customers (and other carriers and their customers) to pay for that network,

as it seeks to do. This point bears repeating: ***Intrado will be able to provide its 911 services under either Verizon's proposed interconnection arrangements or Intrado's.*** (*See* Verizon Ex. 1.0 at 5, 12.) Leaving aside the technical and reliability concerns with Intrado's proposals (discussed below and in Verizon's Initial Brief), the chief difference between Intrado's and Verizon's respective interconnection proposals is who bears the cost of Intrado's proposed network configuration – Intrado or Verizon. The answer – under both governing federal law and sound policy – must be that Intrado pays for the network it seeks to establish.

The fundamental problem with Intrado's case is that the law under which it chose to petition for interconnection does not fit its business plan to provide 911 services. But, as the Illinois ALJs concluded, having chosen to seek section 251(c) interconnection, Intrado cannot bend that law to suit its business plan: "The Commission observes that Intrado chose its business model with full knowledge of the Federal Act. Its efforts to obtain interconnection under the Federal Act for that business model have not been entirely successful, at least thus far. It may occur that Intrado will modify its business plan to obtain interconnection more readily." (*Ill. Proposed Order* at 18.) Indeed, Intrado's resources would be better directed to negotiating reasonable commercial interconnection arrangements than pursuing arbitration of unreasonable interconnection terms to which it has no right under section 251(c). Verizon stands ready to negotiate such arrangements.

ISSUE 1: WHERE SHOULD THE POINTS OF INTERCONNECTION BE LOCATED AND WHAT TERMS AND CONDITIONS SHOULD APPLY WITH REGARD TO INTERCONNECTION AND TRANSPORT OF TRAFFIC?

As the Commission knows, the parties' principal dispute with respect to Issue 1 is whether Verizon can be forced to interconnect with Intrado on Intrado's own network when Intrado provides 911 service to a PSAP. Despite Intrado's repeated recognition that federal law requires the POI to be within Verizon's network (Intrado Br. at 14; Intrado Petition for Arb. at

23; Intrado Ex. 2.0 at 20), Intrado proposes to place POIs on its own network – as many as it wishes, anywhere that it wishes, and as far from Verizon's network as Intrado wishes. Intrado states that "Verizon is wrong when it claims that Intrado Comm's language would allow Intrado Comm to choose as many POIs as it wishes" (Intrado Br. at 22), but that is exactly what Intrado's language (which Intrado never quotes in its brief) would allow Intrado to do:

> For areas where Intrado Comm is the 911/E-911 Service Provider, Intrado Comm shall provide to Verizon, in accordance with this Agreement, interconnection at ***a minimum of two (2)*** geographically diverse technically feasible Point(s) of Interconnection on Intrado Comm's network for the transmission and routing of 911/E-911 Calls to PSAPs for which Intrado Comm is the 911/E-911 Service Provider.
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> (Intrado's proposed § 1.3.2 of the 911 Attachment (emphasis added).)

"A minimum of two," of course, means at least two, but not limited to two or any other number. Consistent with Intrado's broad language, Intrado's witnesses did not testify that they would be limited to two POIs, indicating only that Intrado would place "initial" POIs in Ohio in Columbus and West Chester (Tr. at 155-56 (citing Intrado Response to Request #29)); Intrado Ex. 2.0 at 20), both outside of Verizon's service territory. (*See* Verizon Br. at 6).

But whether Intrado intends to place 2 or 200 POIs on its network, there is no law permitting Intrado to do so. Intrado stops short of arguing that anything in the Act *requires* the Commission to adopt its extreme proposal. Instead, it makes the *policy* argument that giving Intrado the unilateral discretion to choose POIs on its network "benefits public safety" (Intrado Br. at 13) and claims support for its policy arguments in an assortment of sections in the Act, none of which speaks to POI placement, and an FCC case that has nothing to do with interconnection.

As Verizon explained in its Initial Brief, the POI placement issue is easy to decide because the governing law is so clear. Section 251(c) states that each incumbent local exchange

carrier has the duty to provide "interconnection with the local exchange carrier's network...at any technically feasible point within the carrier's network." (47 U.S.C. § 251(c)(2)(B).) The FCC's rule implementing this provision, Rule 51.305, likewise makes clear that the incumbent LEC must provide interconnection with its network "[a]t any technically feasible point *within the incumbent LEC's network.*" (47 C.F.R. § 51.305 (emphasis added).) Ohio's interconnection rule correctly reflects federal law that "[e]ach ILEC shall provide interconnection to requesting telephone companies at any technically feasible point within its network." (Ohio Admin. Code § 4901: 1-7-06(A)(5).) These rules apply to all traffic exchanged between an ILEC and an interconnecting carrier. Neither section 251(c) nor anything else in the Act prescribes different rules for 911/E911 calls than for all other calls, and the Commission cannot change federal law based on Intrado's misguided policy arguments.

Contrary to Intrado's arguments, the Commission's task in this arbitration is not to decide what 911 "policies and arrangements" are best for Ohio (Intrado Ex. 2.0 at 15, Intrado Ex. 1.0 at 7-8, 13), but to apply the interconnection requirements Congress dictated through the Act. There are no broad 911 policy questions before the Commission here and they could not, in any event, be resolved in this bilateral arbitration. (Verizon Br. at 5.) The development of 911 policies and the planning, administration, implementation, and funding of 911 systems are governed by Ohio's detailed 911 laws and regulations. (*See* Revised Code §4931.41-70; Ohio Admin. Code §§ 4901: 1-8-01 – 1-8-06.) The decision in this arbitration cannot affect any company's obligation to comply with these statutes and rules or its 911 tariffs. To the extent competitive 911 provision is authorized under Ohio law, the marketplace will determine the merits of Intrado's and Verizon's respective 911 products – provided the Commission does not confer upon Intrado the artificial competitive advantages it seeks in this arbitration.

A. The Commission Cannot Find that Congress Intended Something Other than What It Said in the Act.

As Intrado recognizes, section 251(c)(2), which governs the interconnection arrangements under arbitration, imposes four requirements upon the ILEC (Intrado Br. at 12) – that is, the duty to provide interconnection with its network "for the transmission and routing of telephone exchange service and exchange access" (47 U.S.C. § 251(c)(2)(A); "at any technically feasible point within the carrier's network" (47 U.S.C. § 251(c)(2)(B); "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection (47 U.S.C. § 251(c)(2)(C)); and "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252" (47 U.S.C. § 251(c)(2)(D).)

Despite citing all four provisions, Intrado tries to convince the Commission to ignore the section 251(c)(2)(B) requirement for the POI to be on the ILEC's network because that rule was "established for the benefit of the competitor, not the ILEC." (Intrado Br. at 15.) Intrado's view is that, in this case, interconnecting within Verizon's network, as the Act and the FCC's rule require, would not be the most favorable arrangement for Intrado, so the Commission need not follow those legal requirements. Intrado suggests that the FCC allows Intrado to demand arrangements other than interconnection on the ILEC's network: "While the single point of interconnection rule was available to competitors, the FCC expressly recognized competitors were not precluded from establishing an alternative arrangement, such as one that permitted the

ILEC to deliver its traffic to a different point or additional points that were more convenient for the incumbent than the single point designated by the competitor."[8]

This argument deserves no serious consideration. The FCC has not recognized, "expressly" or otherwise, that interconnecting carriers may force an ILEC into an "alternative arrangement" for interconnection on the interconnecting carrier's network. What the FCC actually said in the passage Intrado cites is that the rule requiring the ILEC and competing carrier to exchange traffic at the same point on the ILEC's network "does not preclude the parties from *agreeing* that *the incumbent* may deliver its traffic to a different point or additional points that are more convenient for *it*." (Virginia Arbitration Order, ¶ 71 (emphasis added).) Therefore, the ILEC and an interconnecting carrier may ***agree*** to negotiate different points that are more convenient ***for the ILEC***. But the competing carrier may not force the ILEC to interconnect at points that are less convenient for the ILEC.

Intrado's argument, moreover, presumes that Verizon has forced CLECs to take their 911 traffic to different POIs on Verizon's network than those established for non-911 traffic – leading Intrado to conclude that it can force Verizon to take its traffic to Intrado's network. This makes no sense. Again, competing carriers bring all their traffic to Verizon's network because they are required to under federal law; there is no reciprocal requirement for Verizon to take any traffic, 911 or otherwise, to a competing carrier's network. And Verizon does not force CLECs to establish different or additional points of interconnection for 911 traffic. Rather, as Verizon has repeatedly pointed out, CLECs ***agree*** to interconnect at Verizon's selective routers for 911 traffic (while other traffic may be delivered to a different POI on Verizon's network), because

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[8] Intrado Br. at 15, *citing Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, etc.*, Memorandum Opinion and Order, 17 FCC Rcd 27039 ("*Virginia Arbitration Order*") at ¶ 71 (2002).

call sorting at the selective routers is the most cost-effective and efficient arrangement for the CLECs. (Verizon Ex. 1.0 at 48-49; Tr. 41, 46.)

Intrado also suggests that Verizon is violating section 251(c)(2)(D), quoted above, which requires the ILEC to interconnect on "just, reasonable, and nondiscriminatory" conditions, because Verizon will not interconnect on Intrado's network as other carriers interconnect on Verizon's network. But again, Intrado is ignoring section 251(c)(2)(B), which requires interconnection within the ILEC's network. The Commission must apply all four of section 251(c)(2)'s requirements; it cannot read section 251(c)(2)(D) to override section 251(c)(2)(B)'s requirement for the POI to be on the ILEC's network, and nothing Intrado cites supports this interpretation.[9] Even if Intrado were the kind of true local exchange competitor Congress envisioned (and it is not), the Commission could not accept Intrado's position that Congress *really* intended to give requesting carriers whatever kind of interconnection arrangements they want--despite the specific interconnection requirements Congress wrote into the Act, and despite the burdens they might impose on the ILECs and their customers.

Verizon has offered Intrado the same interconnection arrangements it offers to all interconnecting carriers, including interconnection on Verizon's network. As Intrado itself points out, "ILECs may not discriminate against parties based upon the identity of the carrier." (Intrado Br. at 16, *citing Local Competition Order*, ¶ 218.) But that is exactly what Intrado urges the Commission to do – discriminate in Intrado's favor because Intrado is providing just 911 service, instead of the complete local exchange service other interconnecting carriers provide to their customers. The Commission cannot sanction such discriminatory treatment.

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[9] Intrado Br. at 16 nn. 72 & 73, *citing Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, First Report and Order, 11 FCC Rcd 15499 ("*Local Competition Order*") (1996), at ¶¶ 217, 218 .

B. The "Equal-in-Quality" Requirement Does Not Cancel Out the Requirement for the POI to Be on the ILEC's Network.

In another variation of its argument to read the POI-on-the-ILEC's-network requirement out of the Act, Intrado urges the Commission to find that 251(c)(2)(C)'s "equal-in-quality" requirement trumps the POI placement directive in section 251(c)(2)(B). Intrado says that, regardless of the requirement for the POI to be within the ILEC's network, section 251(c)(2)(C) requires Verizon to interconnect at the selective routers on Intrado's network because Verizon's customary arrangement with CLECs is for CLECs to interconnect at Verizon's selective router. In other words, Intrado interprets the equal-in-quality requirement in section 251(c)(2)(C) to implicitly address POI placement, even through section 251(c)(2)(B) explicitly addresses POI placement. (*See* Intrado Br. at 20-21.)

Verizon fully addressed this plainly erroneous argument in its Initial Brief. (Verizon Br. at 11-16.) Again, section 251(c)(2)(C) provides that an ILEC must offer interconnection:

> that is at least *equal in quality* to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.
>
> (47 U.S.C. § 251(c)(2)(C) (emphasis added).)

Section 251(c)(2)(C), by its plain terms, relates to the *way* in which Verizon interconnects with CLECs (*i.e.*, technical criteria and service standards), not *where* the interconnection occurs. As noted, section 251(c)(2) includes four separate criteria, *all* of which apply to the interconnection ILECs must offer under section 251(c), and each of which addresses a different aspect of the interconnection relationship. The "equal-in-quality" subsection cannot be read to cancel out the plainly stated requirement for the POI to be on the ILEC's network.

Intrado's (incorrect) legal interpretation of section 251(c)(2)(C), moreover, rests on the incorrect factual premise that Verizon "routinely requires all competitive carriers" to bring their 911 calls to Verizon's selective routers. (Intrado Br. at 18.) As Verizon has repeatedly corrected Intrado, Verizon's "template" interconnection agreement cannot and does not "mandate" anything. (*See* Intrado Br. at 7.) CLECs routinely agree to bring their 911 traffic at Verizon's selective routers because it is efficient for them to do so. (Verizon Ex. 1.0 at 48-49; Tr. 41, 46.) Contrary to Intrado's claims, Verizon has not "ignored the benefit extended to CLECs under Section 251(c)(2)(B) entitling CLECs to a single POI when the traffic at issue is 911 calls." (Intrado Br. at 21.) Verizon and interconnecting carriers are free to ***agree*** to additional POIs on Verizon's network, and that is what they have done in the case of 911 traffic. And, once again, those agreements for particular interconnection arrangements were made in the context of the requirement for the POI(s) to be on the ILEC's network. CLECs' agreements to deliver their 911 traffic for Verizon's network, in accordance with section 251(c), provide no legal basis for Intrado to force Verizon to take its traffic to Intrado's network.

Contrary to Intrado's claims, Verizon has never "admitted that the POI for connecting to the 911/E-911 network is at the selective router" (Intrado Br. at 17, *citing* Tr. 99) or that "connecting to Intrado Comm's selective router would be appropriate when 911 calls are destined for PSAPs served by Intrado Comm." (Intrado Br. at 17, *citing* Tr. 126.) On the contrary, in the portions of the hearing transcript Intrado cites, Verizon witness D'Amico confirmed Verizon's position that Verizon should be able to continue to use its selective routers to get its traffic to Intrado (Tr. 126), and that CLECs "*negotiate* for the 9-1-1 attachment in the interconnection agreement to have a POI at Verizon's selective routers." (Tr. 99 (emphasis added).)

Nor has "the FCC determined that, when a 911 call is made, the carrier must bring the 911 call" to "the 911 selective router serving the PSAP." (Intrado Br. at 18.) To make this claim, Intrado blatantly misrepresents the FCC's *King County* case.[10] In *King County*, the FCC did *not* determine that the POI must be at the selective router of the carrier serving the PSAP; indeed, the case had nothing at all to do with POIs, section 251, interconnection agreements, or any aspect of ILECs' relationship with interconnecting carriers. In *King County*, the FCC settled a dispute between *wireless carriers and PSAPs* with respect to the allocation of costs between them for wireless E911 implementation. The FCC affirmed its Wireless Telecommunications Bureau's interpretation of FCC rule 20.18(d) to require that: "The proper demarcation point for allocating costs between the wireless carriers and the PSAPs is the input to the 911 Selective Router *maintained by the Incumbent Local Exchange Carrier* (ILEC)." (*King County*, ¶ 4, *quoting* King County Letter at 1 (emphasis added).) The FCC's establishment of a paradigm for allocating the costs of implementing wireless E911 services as between wireless carriers and PSAPs has nothing do with the issue of where the POI must be under a section 251(c) interconnection agreement, and nothing to do with competitive provision of E911 services. There is no FCC precedent authorizing this Commission to ignore the Act and the FCC's rule for the POI to be within the ILEC's network.

Finally, Intrado's argument that Verizon must provide the interconnection arrangements Intrado requests unless they are technically infeasible is nonsense. (Intrado Br. at 21-22.) The technical feasibility analysis would come into play only if Verizon had refused to provide Intrado

[10] *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, Order on Reconsideration, 17 FCC Rcd 14789 (2002) ("*King County*"); Letter from Thomas J. Sugrue, Chief, Wireless Telecomm. Bureau, FCC, to Marlys R. Davis, E911 Program Manager, Dep't of Information and Admin. Services, King County, Washington, WT Docket No. 94-102 (dated May 7, 2001) ("King County Letter").

interconnection at some point *within Verizon's network.* Again, section 251(c)(2) requires an incumbent local exchange carrier to provide interconnection with its network "at any technically feasible point within the carrier's network." There is no requirement for a technical feasibility analysis as to POIs within interconnecting carriers' network, because there is no requirement for the ILEC to interconnect on that other carrier's network.[11]

C. There Are No Industry Recommendations Supporting Intrado's Proposal.

Intrado argues that its "proposal for two geographically diverse POIs is consistent with industry recommendations and guidelines." (Intrado Br. at 22.) But there are no 911 industry recommendations or guidelines ***at all*** with respect to POIs under section 251 interconnection agreements, which is the issue the Commission must resolve in this section 252 arbitration.

Intrado's claims about the alleged consistency of its proposals with industry guidelines and recommendations relate only to general recommendations for diversity and redundancy in 911 networks, rather than Intrado's specific interconnection proposals. Indeed, the only industry filings Verizon has seen in any of Intrado's arbitrations are critical, not supportive, of Intrado's network proposals. The West Virginia Enhanced 9-1-1 and a coalition of Texas 911 authorities, for instance, cited reliability and public safety issues related to Intrado's proposals.[12] And even

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[11] In addition to its erroneous claims that sections 251(c)(2)(C) and 251(c)(2)(D) give the Commission authority to adopt Intrado's proposals, Intrado argues that sections 251(e), 253(b) and 706 of the Act provide such authority. (Intrado Br. at 10-12.) Verizon already fully addressed this argument in its Initial Brief (at 16-21), explaining that nothing in any of these provisions has anything to do with determining Verizon's interconnection obligations in this arbitration. Section 251(e) addresses FCC authority over numbering administration; section 706 addresses broadband deployment and instructs the FCC to conduct a rulemaking into broadband availability; and section 253(b) is a "safe harbor" provision reserving to the states their existing regulatory authority over certain matters, despite section 253(a)'s prohibition on state requirements precluding any entity from providing telecommunications services.

[12] *See* Verizon Testimony at 20-21, *citing* Letter from Robert Hoge, Secretary, West Virginia Enhanced 9-1-1 Council, to Sandra Squire, Exec. Sec'y, W.V. Pub. Serv. Comm'n (dated Nov. 7, 2008) ("*WV 911 Council Letter*") (Verizon Ex. 1.8); *Petition of Intrado Comm., Inc. for Compulsory Arbitration with Verizon Southwest Under the FTA Relating to Establishment of an Interconnection Agreement*, Docket. No. 36185, Unopposed Joint Motion of the Tex. Comm'n on State Emergency Comm., The Texas 9-1-1 Alliance, and the Municipal Emergency

though it dismissed Intrado's petitions for arbitration with AT&T and Embarq, the Florida Commission expressed concerns about the public safety drawbacks of Intrado's plan to force carriers to haul calls to distant points on its network.[13]

Again, this is not a proceeding to decide the best 911 polices and arrangements for the State of Ohio, so Intrado's speculation about the potential merits of its as-yet-unbuilt network are not relevant to determining Verizon's interconnection obligations. In any event, as Verizon has explained, particularly in the context of Issue 5, Intrado's proposals are more likely to undermine than enhance the reliability of the 911 network – which, as Intrado itself admits, is already diverse and redundant. (Intrado Br. at 24.)

Intrado incorrectly argues that Verizon's method of routing calls through its selective router and using a common trunk group for all 911 calls destined for Intrado-served PSAPs is inconsistent with recommendations of the National Emergency Numbering Association and the FCC's Network Reliability and Interoperability Council. (Intrado Br. at 23-24.) In fact, inter-selective router trunking is routinely done in today's 911 environment and there is no evidence that it undermines the reliability to the existing 911 system. Indeed, Intrado itself proposes to require Verizon to implement inter-selective routing between Intrado's selective routers and Verizon's selective routers. If Intrado truly believed its own argument about additional potential points of failure, there would be *no* selective routers, whether Verizon's or Intrado's, between end offices (carrier switches) and PSAPs because that would introduce a so-called point of failure and undermine the reliability of the system. That, of course, would be extremely

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Comm. Districts Ass'n for Leave to File a Statement of Position (filed Oct. 17, 2008) ("*Texas 911 Alliance Motion*") (Verizon Ex. 1.9).

[13] *Intrado/Embarq Order*, at 33; *Fla. AT&T/Intrado Order*, at 8 ("We are concerned that carriers could potentially be transporting 911/E911 emergency calls up and down the state or perhaps even out of state."); *Fla. Embarq/Intrado Order*, at 7 ("We are concerned that carriers may be forced to transport 911/E911 calls over great distances, perhaps even out of state.").

inefficient and be tantamount to a return from Enhanced 911 to basic 911 since the hallmark of Enhanced 911 is embodied in the industry-standard use of selective routers. (*See, e.g.*, Verizon Ex. 1.0 at 45, 49.)

In fact, at page 19 of the NENA 911 Tutorial Intrado excerpted by Mr. Hicks and cited in Intrado's brief (Intrado Br. at 24, *citing* Intrado Ex. 2.0, Att. 3), NENA calls building new trunk groups (as Intrado proposes here) "expensive and inefficient," while confirming that inter-tandem networking (as Verizon proposes here) removes an obstacle to effective E911 deployment:

> Some residents of the town may live in an area served by a different 9-1-1 tandem than the one that serves their local PSAP. There are two solutions. One is to build a trunk group from the "foreign" 9-1-1 tandem to the PSAP. This is expensive and inefficient, but sometimes unavoidable.
>
> The other solution is **inter-tandem networking**. If the tandems are capable, calls from those subscribers travel from one tandem to the other on "inter-tandem" or "inter-machine" trunks (IMTs). This removes the 9-1-1 tandem boundaries as an obstacle to effective deployment of Enhanced 9-1-1.[14]
>
> (Emphasis added.)

A second NENA Tutorial confirms that the industry standard is to concentrate trunks from end offices at a "911 tandem" or selective router from which a single trunk group serves the PSAP. This type of most-efficient configuration is used throughout the country.[15]

There is no question that Verizon's proposal is consistent with NENA recommendations and no evidence that the inter-selective-routing commonly used today has undermined network reliability.

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[14] NENA 911 Tutorial (Jan 19, 2000), available at http://www.nena.org/florida/Directory/911 Tutorial%20Study%20Guide.pdf.

[15] Verizon Ex. 1.0 at 45 n. 20, citing NENA Technical Development Conference 9-1-1 Tutorial, at 5, *available at* http://www.nena.org/florida/Directory/911Tutorial%20Study%20Guide.pdf.

D. There Is No Requirement for Verizon to Haul Its 911 Traffic to Distant Points.

Intrado argues that "LATA boundaries are inapplicable to 911/E-911 services," presumably in service of its proposal for Verizon to haul traffic to multiple POIs on Intrado's network, as distant from Verizon's network as Intrado wishes them to place them. Intrado's observations that 911 calls may cross LATA boundaries (Intrado Br. at 25) have nothing to do with placement of POIs in a section 251(c) interconnection agreement. The fact that 911 calls may cross LATA boundaries in no way requires Verizon to haul those calls to Intrado's network at POIs outside (or, for that matter, inside) the LATA, and Intrado can point to no authority for this proposition.

Indeed, even in Intrado's arbitrations with Embarq and Cincinnati Bell, where the ILECs apparently agreed to take their 911 traffic to Intrado's network, the Commission rejected Intrado's proposal for multiple POIs and required interconnection to occur within the ILEC's service territory, unless the parties mutually agree otherwise. (*CBT/Intrado Order* at 9; *Embarq/Intrado Order* at 33.)

E. Intrado's Proposals Would Disadvantage Other Carriers and the General Public.

As Verizon has explained, Intrado's proposal for Verizon to direct trunk 911 calls from its end offices to POIs on Intrado's network means that CLECs and wireless carriers will no longer be able to aggregate their traffic at Verizon's selective routers for transmission to the PSAPs, as most of those carriers do today. (Verizon Ex. 1.0 at 47, 52-53.) Instead, those carriers will, like Verizon, have to direct trunk their traffic to Intrado's selective routers on Intrado's network. If they do not have such trunking arrangements in place with Intrado, their customers' 911 calls will not reach Intrado-served PSAPs. (Verizon Ex. 1.0 at 47.)

Intrado argues that these new arrangements will not disadvantage those carriers because they will have the opportunity to interconnect with Intrado at "at least two, and possibly more,

selective routers in every state in which Intrado Comm plans to offer service." (Intrado Br. at 26.) Intrado calls Verizon's concerns about the effect of Intrado's proposals on other carriers "misplaced and not relevant to its interconnection arrangement with Intrado Comm." (Intrado Br. at 26.)

Having tried to sell its proposals mainly with allegations about their public interest benefits, Intrado cannot cry foul when Verizon rebuts Intrado's ill-founded claims. Intrado's proposals will most certainly disadvantage other carriers, as well the general public.

First, with respect to other carriers, Intrado's proposal, if adopted, would disadvantage all other carriers with which Verizon has section 251 interconnection agreements, because none of those other carriers have the favorable terms Intrado seeks here – that is, interconnection within, and direct trunking to, the other carrier's network. This is not just a disadvantage, it is impermissible discrimination. Indeed, if the parties had voluntary negotiated such discriminatory terms, the Commission would have to reject them under section 252(e)(2)(A)(i) (listing as grounds for rejection of a negotiated agreement a finding that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement.")

Second, carriers will also be disadvantaged because Intrado's proposal would remove those carriers' option – indeed, their existing contractual right – to send their 911 traffic to Verizon's selective routers. They would have no choice but to abandon their existing 911 call delivery arrangements and they would be forced to establish new direct trunking arrangements to take their traffic to at least two, and, at Intrado's discretion, additional, POIs on Intrado's network, regardless of how far those POIs are from the carriers' networks. And they would have to figure out how to sort their 911 traffic to the right PSAPs, because they would no longer be

able to use Verizon's selective routers. Intrado cannot seriously claim that carriers will not be disadvantaged by having to establish, at their own expense, completely new 911 call delivery arrangements. Those carriers, like Verizon, have the right to engineer their networks as they see fit.

As for the disadvantages to the public in general, if Intrado cannot force all other carriers into the direct trunking agreements it plans for the state, those carriers' customers' 911 calls will not reach Intrado-served PSAPs, as Verizon has explained. Intrado's only response to this serious public safety concern about dropped calls is that it plans to obtain other carriers' agreements to its burdensome proposal. (Intrado Ex. 2.0 at 47.) But planning to obtain such agreements does not mean that Intrado actually will be able to obtain them.

Contrary to Intrado's mischaracterization of Verizon's position, Verizon is not planning to use "transit arrangements" to send 911 traffic to Intrado from other carriers (Intrado Br. at 26-28.) Intrado wants to label other carriers' use of Verizon's selective routers as transit service, because Verizon has no legal obligation to provide transit service (but rather provides it voluntarily under its interconnection agreements). As such, Intrado concludes, "[a] service as important as 911 should not be relegated to 'voluntary' transit service arrangements that, in Verizon's view, it is under no obligation to provide." (Intrado Br. at 27.) Intrado is not fooling anyone by calling selective routing "transit service." Transit service is a specifically defined offering in Verizon's interconnection agreements, under which Verizon agrees to allow an originating carrier to send traffic through Verizon's tandems for delivery to a third party carrier with which the originating carrier has no direct connection. The transit provisions for local exchange traffic are completely separate from the 911 call delivery provisions in Verizon's interconnection agreements. In fact, the transit service provisions were removed from the

Intrado/Verizon draft agreement under arbitration, because the parties agreed they were not relevant to Verizon's and Intrado's interconnection for 911 service; Verizon's template transit section provides for Verizon to carry traffic across its network from the contracting carrier to other LECs and wireless carriers and there will be no such traffic from Intrado in this case. Delivery of other carriers' 911 traffic is clearly not voluntary under any of Verizon's interconnection agreements and would not be voluntary under Verizon's proposal here. On the contrary, Verizon has explicitly recognized its obligation, under section 271(c)(2)(B)(vii)(I) of the Act, to provide other carriers with nondiscriminatory access to 911 services. That access is provided today in most cases through Verizon's selective routers. (Verizon Ex. 1 at 39.) Intrado's proposal would remove this option for CLECs, disrupt Verizon's agreements reflecting this option, and thus compromise Verizon's ability to meet its obligation to provide nondiscriminatory access to 911 services. So Intrado, not Verizon, would leave delivery of third party carriers' 911 traffic to chance by stopping Verizon from accepting these carriers' 911 calls at its selective routers.

ISSUE 2: WHETHER THE PARTIES SHOULD IMPLEMENT INTER-SELECTIVE ROUTER TRUNKING AND WHAT TERMS AND CONDITIONS SHOULD GOVERN THE EXCHANGE OF 911/E911 CALLS BETWEEN THE PARTIES?

As Verizon explained in its Initial Brief, inter-selective router trunking is trunking between the parties' respective selective routers. Such trunking allows transfer of calls between PSAPs when, for example, calls are initially directed to the wrong PSAP.

The parties do not disagree about the merits of selective router trunking – in fact, as Verizon's witnesses have testified, the interconnection between Verizon and Intrado for ***all*** 911 calls can and should be accomplished by means of trunking between selective routers. (Verizon Br. at 24; Verizon Ex. 1.0 at 27.) Their disagreements instead involve the details of Intrado's particular inter-selective routing proposal. As Verizon has explained, that proposal is

unacceptable for a number of reasons, chief among them that it assumes Intrado is entitled to designate POIs on its own network – which it is not, as Verizon explained in Issue 1, above. Intrado's proposal would, in addition, dictate what Verizon does on its own network on its side of the POI, contrary to the Commission's rulings in Intrado's arbitrations with Cincinnati Bell, Embarq and AT&T that the ILEC is entitled to engineer its own network as it seeks fit. (*See* discussion of Issue 5, below.) Intrado's proposal would also require an excessive level of dial plan information in the interconnection agreement that is not customary or appropriate. Instead, the dial-plan coordination is better left to the implementation efforts that are ordinarily undertaken by interconnecting carriers. (*See* Verizon Br. at 25; Verizon Ex. 1.0 at 29.)

Once again, Intrado can offer no legal authority to support its proposals – only vague, general citations that do not mean what Intrado claims they do. Intrado first suggests that the Commission's order certifying Intrado as a competitive emergency services telecommunications carrier ("CESTC") mandates that ILECs and Intrado operate in a cooperative manner and that Intrado implement the capability to transfer 911 calls and associated data across county lines.[16] But the *Certification Order* says nothing about dial plans, let alone require dial-plan detail in interconnection agreements. Dial plans are typically decided and worked out between PSAPs and may not be information that the carriers are in the best position to provide. (Tr. at 124.)

In any event, Verizon indicated that it is willing to provide to Intrado the same type of dial-plan information that it shares with other providers. (Verizon Ex. 1.0 at 25.) Dial-plan information is shared cooperatively among carriers today without prescriptive interconnection agreement requirements, allowing carriers to transfer 911 calls and associated data between and

[16] Intrado Br. at 30, *citing Application of Intrado Communications Inc. to Provide Local Exchange Services in the State of Ohio*, Finding and Order (Feb. 5, 2008) ("*Certification Order*"), at findings 9 & 12, Entry on Rehearing (April 2, 2008) ("*Certification Rehearing Order*").

among 911 networks, consistent with the cooperative approach the *Certification Order* contemplates. There is nothing in the *Certification Order* that mandates the outcome Intrado seeks, and nothing to suggest that the way in which Verizon shares dial-plan information today with other carriers – and proposes to share it with Intrado – is unworkable or otherwise inadequate.

Intrado also suggests that the FCC found in the *Virginia Arbitration Order* that more detail is better with respect to 911 interconnection arrangements, so the Commission here should adopt Intrado's more detailed proposals for inter-selective router arrangements. (Intrado Br. at 31.)

The *Virginia Arbitration Order* does not support Intrado's broad premise that more detail is necessarily better. That case involved competing language between Verizon and former MCI with respect to MCI's access to Verizon's 911 platform – not a request, like Intrado's here, for Verizon to reconfigure its 911 platform. The FCC did not approve any 911-related language like Intrado proposes here. Rather, it considered the parties' respective proposals for particular matters (that are not at issue here) and found that MCI's specific, more detailed proposal was better than Verizon's specific, less detailed proposal and also noted that Verizon had expressed no substantive objection to MCI's proposals. (*Virginia Arbitration Order*, ¶¶ 660-61.) This Commission must, like the FCC did, consider the specific details of the parties' respective proposals, not just pick the most detailed proposal – regardless of whether it would impose unlawful requirements upon the ILEC, as Intrado's plan would.

Intrado also erroneously claims that section 251(c)(5) supports its proposal to include an excessive level of dial plan information in the interconnection agreement. (Intrado Br. at 29-30.) Section 251(c)(5) requires "reasonable public notice" of changes in an ILEC's network that

might affect the interoperability of the ILEC's network with interconnecting CLECs' networks, and it does not support Intrado's proposal.

First, as the Commission has already found, call transfer routing capability between PSAPs doesn't even involve section 251(c) interconnection (*Embarq/Intrado Order* at 8, 36), so section 251(c)(5) cannot apply to Intrado's requests relating to dial plans, and cannot require any dial plan terms in the section 251(c) interconnection agreement Intrado seeks here. Neither the *FCC Interoperability Order* Intrado cites nor anything else indicates that section 251(c)(2)(5) contemplates dial plan information in interconnection contracts, let alone the excessive level of information Intrado seeks.[17] The passage from the *FCC Interoperability Order* Intrado cites states "[w]e define the term 'interoperability' as 'the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.'" This does not support Intrado's position that the POI for inter-selective router trunking must be on its network, nor does it support Intrado's proposal for how information about dial-plans should be exchanged. Section 251(c)(5) applies to changes in an ILEC's network that might affect its ability to interconnect with CLEC networks – not to interconnect PSAPs.[18]

Second, even if section 251(c)(5) did apply (and it does not) Intrado is not seeking public notice of anything – it is, instead, seeking to impose, in a bilateral contract, ongoing notice

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[17] Intrado Br. at 29-30, *citing Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, ¶ 178 (1996) ("*FCC Interoperability Order*").

[18] Intrado's suggestion that the West Virginia Commission and the Staff of the Illinois Commerce Commission support its position is also off-base. (Intrado Br. at 34.) While allowing for some dial-plan language to remain in the interconnection agreement, the West Virginia Commission ruled that Intrado is not entitled to 251(c) interconnection for inter-selective routing arrangements. *Intrado Comm., Inc. and Verizon West Virginia Inc., Petition for Arbitration Filed Pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, Case No. 08-0298-T-PC, Arbitration Award ("*W.V. Arb. Award*"), at 13 (Nov. 14, 2008), *aff'd by* Commission Order (Dec. 16, 2008) ("*W.V. Order*"). And, as discussed above, the ALJs in the Intrado/AT&T arbitration in Illinois issued a proposed arbitration decision finding Intrado is not entitled to 251(c) interconnection at all and dismissing all the parties' disputes over contract language as moot. (*Ill. Proposed Order* at 20-21.)

requirements with respect to changes in dial plans (as well as substantive requirements to undertake particular activities to support Intrado's proposed call transfer methodology and to require the parties to maintain inter-911-selective router dial plans). (Verizon Br. at 24-25; Intrado proposed 911 Att., § 1.4.4.)) As Verizon has stated, it will provide dial plan information to Intrado just as it does to other providers, but Intrado is not entitled to special private notice of dial-plan changes under section 251(c)(2) or any other provision. Intrado's proposed, excessive level of dial-plan detail in the interconnection agreement is not customary, appropriate, or workable and would impose requirements upon Verizon (including maintenance of dial plans) that have no basis in the law. Therefore, Intrado's specification of the methods for transfer of 911/E-911 calls should not be included in the agreement.

ISSUE 3: WHETHER FORECASTING REQUIREMENTS PROVISIONS SHOULD BE RECIPROCAL.

Intrado argues that "[f]orecasts are integral to ensuring that the Parties' networks meet industry standards and are properly sized to accommodate both immediate and anticipated growth, without experiencing implementation delay." (Intrado Br. at 34-35.) From this generally indisputable proposition, Intrado concludes that the Commission should approve its particular proposal for forecasting obligations to "apply equally to both parties." (*Id.*) Neither this proposition nor Intrado's unwarranted conclusion based on it require the adoption of Intrado's language.

First, that language would require Verizon to make forecasts that Verizon repeatedly has explained it cannot produce with any accuracy, because such forecasts depend on knowledge that Verizon does not have, including the level of Intrado's potential success in the marketplace. (Verizon Ex. 1.0 at 37; Tr. at 128.) Requiring Verizon to make forecasts that it knows it cannot make accurately does not promote the proper sizing of the Parties' networks, but undermines it,

and would impose a needless burden upon Verizon. To the extent Intrado signs up PSAPs as customers, those PSAPS will have the best knowledge of call volumes from Verizon's serving area to the PSAP. Based on these facts, the West Virginia Commission rejected Intrado's reciprocal forecasting proposal, correctly concluding that the Intrado-served PSAPs, which have a business relationship with Intrado, will be better positioned than Verizon to assess call volumes to them.[19]

Second, forecasting obligations already ***do*** apply equally to both parties under language to which the parties have already agreed, when it makes ***sense*** for those obligations to apply equally.[20] Intrado's insistence on forecasts that Verizon is ill-equipped to produce (and that Intrado can better undertake), let alone produce accurately, is inexplicable. The Commission therefore should reject Intrado's proposed language.

ISSUE 4: WHAT TERMS AND CONDITIONS SHOULD GOVERN HOW THE PARTIES WILL INITIATE INTERCONNECTION?

Intrado argues that language requiring it to provide certain notices and information to Verizon when Intrado seeks to interconnect with Verizon should be reciprocal. (Intrado Br. at 37.) Intrado contends that it will require the same notices and information in areas where Intrado Comm provides 911 service to a PSAP. (*Id.*) Intrado's argument is based on the false assumption that Verizon can be forced to interconnect with Intrado at POIs on Intrado's network. Verizon cannot be compelled to interconnect to points on Intrado's network, as discussed in

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[19] *Intrado Comm., Inc. and Verizon West Virginia Inc., Petition for Arbitration Filed Pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, Case No. 08-0298-T-PC, Arbitration Award ("*W.V. Arb. Award*"), at 12-13 (Nov. 14, 2008), *aff'd by* Commission Order (Dec. 16, 2008) ("*W.V. Order*"), at 3-4.

[20] Agreed-upon language in 911 Attachment Section 1.5.5 states:

> Upon request by either Party, the Parties shall meet to: (a) review traffic and usage data on trunk groups; and (b) determine whether the Parties should establish new trunk groups, augment existing trunk groups, or disconnect existing trunks.

Issue 1 above. Because Intrado's proposal to make Verizon's proposed section 1.5 of the 911 Attachment reciprocal necessarily assumes Verizon must interconnect to points on Intrado's network, the Commission must find that this proposal, like Intrado's proposal under Issue 1, must be rejected. (Verizon Ex. 1.0 at 33.) For this reason, and the reasons more fully described in Verizon's Initial Brief (at 27-28), the Commission should adopt Verizon's proposed language in §§ 1.5.1, 1.5.2, 1.5.3 and 1.5.4 of the 911 Attachment, which correctly describes how Intrado can initiate interconnection at technically feasible POIs on Verizon's network. (Verizon Br. at 28; Verizon Ex. 1.0 at 33-34.)

ISSUE 5: HOW WILL THE PARTIES ROUTE 911/E911 CALLS TO EACH OTHER?

A. The Commission Has Already Rejected Intrado's Direct Trunking Proposal Three Times.

Intrado's proposal for Issue 5, along with its proposal for Issue 1, regarding POI placement, constitutes Intrado's network architecture proposal. Intrado's contract language would require Verizon to not only take its end users' 911 traffic to multiple, distant POIs on Intrado's network (which Intrado has confirmed will be outside Verizon's service territory), but would dictate how Verizon gets it to those POIs. Specifically, Intrado would require Verizon to establish, at Verizon's expense, two direct trunks from each of Verizon's end offices in areas where Intrado serves the PSAP, and would force Verizon to bypass its own selective routers and to develop, again at Verizon's expense, an entirely new call-sorting mechanism. (*See* Intrado Ex. 2.0, Hicks DT at 33-34, 40, 43-44; Verizon Ex. 1.0, DT at 10-11, 50-51.) Other than the two POIs Intrado says it plans to locate *outside* Verizon's territory in Ohio (that is, in Columbus and West Chester), Intrado has not identified the location of any other POIs it may establish or the total number it plans to establish, so Intrado's proposal gives it *carte blanche* to impose unlimited costs upon Verizon, as well as other carriers. As Verizon has explained, Intrado's

proposal would require carriers that connect to Verizon's selective routers today to dismantle those interconnection arrangements and instead direct trunk their traffic to Intrado using some unknown, alternative form of call sorting. (*See* Verizon Br. at 31-34.)

As Verizon explained in its Initial Brief, Intrado has not supported and cannot support this unlawful, expensive, and anticompetitive direct trunking proposal. If, contrary to law, the Commission directs Verizon to place a POI (or POIs) on Intrado's network, then the transport facilities needed to get 911 calls to that POI will be on Verizon's side of the POI. So Intrado's proposal for Verizon to establish direct trunks to those POIs on Intrado's network and to implement call-sorting capability in its end offices seek to dictate how Verizon engineers its own network on its own side of the POI.

The Commission has already rejected Intrado's direct trunking proposal three times, confirming that there is nothing that would justify one carrier dictating to another carrier how it transports traffic *within its own network.* In Intrado's arbitration with CBT, the Commission concluded that a carrier is "entitled to route its end users' 911 calls to the point of interconnection and engineer its network on its side of the point of interconnection." (*CBT/Intrado Order* at 14.) In Intrado's arbitration with Embarq, the Commission, likewise, found that "Embarq is responsible for routing its end users' 9-1-1 calls on its side of the POI." (*Embarq/Intrado Order*, at 33.) And in Intrado's arbitration with AT&T, the Commission once again ruled that the ILEC "is not required to establish direct trunking to Intrado's selective router(s) where Intrado is the 911 provider to a PSAP. AT&T will, therefore, be able to engineer its network on its side of the POI, ***including the use of its selective router(s)***, for delivery of its

end users' 911 traffic to Intrado's selective router."[21]

As the Commission has already determined, the ILEC, not Intrado, has the right to decide how best to configure its own network. Intrado has presented nothing in this arbitration to justify a departure from this principle. The Commission must, therefore, reject, for the fourth time, Intrado's direct trunking/call sorting proposal, which would impermissibly transfer to Intrado Verizon's right to manage its own network.

B. Verizon's 911 Call Delivery Arrangements Provide No Basis for Allowing Intrado to Engineer Verizon's Network.

Intrado does not deny that its proposal would dictate how Verizon engineers its own network. (*See* Intrado Br. at 39.) Intrado instead argues that "Verizon imposes similar requirements on competitors when it is the designated 911/E-911 service provider," so, by Intrado's logic, Intrado should be able to impose direct trunking requirements on Verizon. (*Id.*) Once again, Verizon does not require other carriers to direct trunk their traffic to Verizon's selective routers, but in interconnection agreement negotiations, these carriers typically agree to these customary arrangements for delivery of 911 calls to the appropriate PSAPs. And again, these agreements are always made, as they must be, in the context of the federal requirement for the POI(s) to be on Verizon's network. There is no reciprocal requirement for Verizon to deliver 911 calls to other carriers' networks, and the Commission cannot create one just for Intrado.

Citing Verizon witness D'Amico's testimony at the hearing, Intrado states that Verizon "recognizes that service quality and industry standards call for the use of dedicated connections" for 911 traffic. (Intrado Br. at 38.) Verizon made no such general statement about how 911 networks should be configured. Mr. D'Amico's comments were clearly specific to Verizon's

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[21] *Petition of Intrado Comm. Inc. for Arbitration Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with AT&T*, Arbitration Award, Case No. 07-1280-TP-ARB (March 4, 2009) ("*AT&T/Intrado Order*"), at 32 (emphasis added).

own network, and the arrangements that were most cost-effective and reliable for Verizon (Tr. 97), again, in the context of the federal requirement for carriers to bring their traffic to points on Verizon's network. As Verizon discussed above, there are no service quality or industry standards that support or address Intrado's specific interconnection proposal.

Verizon is not, in any event, stopping Intrado from using any kind of network configuration that Intrado believes is the best approach for Intrado's own network, but Verizon has no obligation to pay for it.

Nor does Verizon have any obligation to abandon use of its selective routers, as the Commission has already decided. These selective routers are part of Verizon's network, on Verizon's side of the POI(s) (regardless of whether those POIs are on Verizon's network or Intrado's).

Intrado complains that use of Verizon's selective routers introduces an unnecessary stage of switching in transmitting 911 calls to Intrado and undermines network reliability. But, as Verizon has shown, selective routing is the *only* industry-accepted means available today for 911 calls to be routed to the correct PSAP. Selective routing would only be potentially unnecessary for a particular Verizon end office if all of the PSAPs serving that end office were served by Intrado *and all other carriers established direct trunks to route emergency calls to Intrado.* (Verizon Ex. 1.0 at 53-54.) If these conditions are not present, then Intrado's proposal is certain to undermine the network reliability it claims to be promoting.

Moreover, Verizon's use of a common trunk group, instead of multiple dedicated trunks, is not "inconsistent with NENA recommendations and industry practice," as Intrado charges. (Intrado Br. at 40-41.) As Verizon's witnesses have pointed out, and as Verizon discussed under Issue 1 here, Verizon's existing practice of sending 911 traffic over a common trunk group to PSAPs is, in fact, the industry standard and NENA does not recommend anything different. In

any event, as Verizon has pointed out numerous times, this is not a proceeding to evaluate the best methods of 911 provision for Ohio. Those kinds of decisions can be made only through the processes established in Ohio's 911 statutes and regulations, with the participation of all affected entities, not in this arbitration.

Intrado cites some Illinois Commission Staff testimony from its arbitration with Verizon in Illinois to try support its case for requiring Verizon to direct trunk 911 calls to Intrado's network. (Intrado Br. at 38-39.) As an initial matter, the substantive issues in Verizon's arbitration with Intrado in Illinois (like the issues in Intrado's arbitration with AT&T in Illinois) will likely become moot if the Illinois Commission approves its ALJs' ruling that the Commission lacks the jurisdiction to consider Intrado's interconnection request, because Intrado's 911 services do not entitle it to section 251(c) interconnection. (*See Ill. Proposed Order*, at 18.)

Intrado also neglects to point out that the Illinois Staff correctly and unambiguously concluded that (if the arbitration proceeds), interconnection must occur *at Verizon's selective routers on Verizon's network.*[22] So the Illinois Staff did *not* support Intrado's recommendation for Verizon to direct trunk its traffic to Intrado's selective routers on Intrado's network. And to the extent the Illinois Staff recommended any direct trunking from Verizon's end offices to POIs on Verizon's network, that recommendation was not clearly defined and its feasibility was not examined; Verizon would have opposed this aspect of the Staff's recommendation if the parties had not agreed to stay the proceeding pending a Commission decision on the ALJ's recommendation to dismiss Intrado's arbitration with AT&T. The Illinois Staff testimony, in any event, provides no basis for this Commission to depart from its firmly held conclusion that the ILEC is entitled to manage its own network and continue to use its selective routers to route

[22] Direct Testimony of Jeffrey H. Hoagg, Principal Policy Advisor, Ill. Comm. Comm'n, at 10 (Dec. 19, 2008).

911 traffic.

C. There Is No Law Mandating Adoption of Intrado's Direct Trunking Architecture.

Intrado attempts to support its direct trunking/new call sorting proposal with the same kinds of arguments it used with respect to its POI placement proposal for Issue 1. Intrado claims that "the equal in quality and non-discrimination requirements of the Act mandate the use of dedicated direct trunking" (Intrado Br. at 43), and that the Commission has no choice but to adopt Intrado's proposal because it is technically feasible. (Intrado Br. at 45.) These arguments are just as frivolous as they were when Intrado made them in the context of Issue 1.

As an initial matter, Intrado's legal arguments rest on its factual allegations that Verizon's refusal to direct trunk 911 calls to Intrado's network would "relegate Intrado Comm to a different and lesser from of interconnection" than Verizon provides to itself, resulting in Verizon's end users receiving inferior 911 service when they call Intrado-served PSAPs than when they call Verizon-served PSAPs. (Intrado Br. at 45.) There is nothing in the record to support this ridiculous premise. As Verizon has explained, it uses common trunks today to carry calls to PSAPs, with no reliability issues (and Intrado itself recommends inter-selective-router trunks in the context of Issue 2), so there is no reason to believe that reliability issues will suddenly arise if Verizon continues to use its common trunks to carry calls if it is (unlawfully) directed to take its 911 calls to POIs on Intrado's network. Indeed, this Commission pointed to reliability (as well as expense) concerns in rejecting Intrado's direct trunking proposal the first two times. (*CBT/Intrado Order* at 15; *Embarq/Intrado Order* at 33.) Unlike Intrado – which cannot provide any assurance that 911 calls won't be dropped if other carriers cannot send their 911 traffic to Verizon's selective routers anymore – Verizon would do nothing to compromise the security and reliability of the 911 network. Aside from the flaws in the factual premise of Intrado's "equal-in-quality" argument, Intrado cannot rely on section 251(c)(2) to try to obtain a

section 251(c) interconnection arrangement that is different from the arrangements in every other such interconnection arrangement Verizon has in Ohio. The quality of interconnection that Verizon has offered to Intrado is exactly the same as the quality of interconnection Verizon provides to every Ohio CLEC, which satisfies Verizon's obligations under the section 251(c)(2). Verizon has no obligation to provide Intrado arrangements that are more favorable than it offers any other carrier.

Intrado's reliance on the Communications Act's section 202 for its claim of discrimination as between Verizon end users served by Intrado's PSAP customers and those served by Verizon's PSAP customers also makes no sense. Section 202 is enforced by the FCC, not state Commissions. In any event, as noted, there is absolutely no evidence that Verizon's end users who make 911 calls to Intrado-served PSAPs will be treated any differently by Verizon than those who make 911 calls to Verizon-served PSAPs.

Intrado's technical feasibility argument deserves no more serious consideration than any of its other legal arguments. Under Intrado's unique view of the law, a requesting carrier may obtain any interconnection arrangements it wants, regardless of the expense to the ILEC, unless the ILEC proves that the proposed arrangements are technically infeasible. (Intrado Br. at 45-46.) No such law exists, and Intrado hasn't cited any. Nothing requires Verizon to modify its network in any way Intrado wishes, regardless of the specific interconnection requirements in section 251(c), under which Intrado has sought interconnection. In fact, the *Local Competition Order* paragraphs Intrado cites occur within the FCC's discussion of section 251(c)(2)'s obligation for "incumbent LECs to provide interconnection *within their networks*." (*Local Competition Order*, ¶ 192 (emphasis added).) As Verizon has explained, technical feasibility could only become an issue if Verizon and a requesting carrier disagreed about the technical

feasibility of interconnection at a particular point *within Verizon's network.* (47 U.S.C. § 251(c)(2)(B).)

Moreover, as the FCC has made clear – among other places, in the very section of the *Local Competition Order* Intrado misrepresents as supporting its technical feasibility argument – the requesting carrier is responsible for the costs of interconnection, and must pay the ILEC for any expensive form of interconnection it requests: "Of course, a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."[23] So even if section 251(c) did require Verizon to implement Intrado's network architecture proposal (and it does not), Intrado would have to pay the substantial costs that Verizon would incur to implement these proposals.

D. Intrado's Direct Trunking Proposal Is Vague, Risky, and Unworkable.

Intrado criticizes Verizon for focusing on the concept of "line attribute routing" in its testimony. (Intrado Br. at 41.) Line attribute routing was a concept dreamed up by Intrado to try to convince Commissions its direct trunking proposal would work. It was never implemented anywhere and was not materially different from the obsolete class marking approach occasionally used as a temporary accommodation some 20 years ago before selective routing was universally deployed. (Verizon Ex. 1.0 at 39-44.)

The Commission here rejected Intrado's line attribute routing proposal in its arbitrations with Embarq and CBT and it has been criticized by industry groups elsewhere (*see* Verizon Br. at 41-42), so Intrado has apparently stopped proposing it (which Verizon could not have known at the time it submitted its testimony). Verizon's pre-filed testimony, however, acknowledged that Intrado's proposed contract language is silent with respect to how Verizon is expected to

[23] *Local Competition Order* at ¶ 199; *see also* ¶¶ 200, 209, 225, 552.

route 911 calls to the right PSAP if it (and other carriers) must bypass Verizon's selective routers, as they would be required to do under Intrado's direct trunking proposal. (Verizon Ex. 1.0 at 40-41.)

As Verizon explained in its Initial Brief (at 32-34), Intrado's new strategy of declining to specify any method at all for implementing its direct trunking proposal (Intrado Ex. 2.0 at 39) does not make Intrado's case any more credible. Whether Intrado proposes line attribute routing or nothing at all for routing 911 calls as part of its direct trunking proposal, there is no existing, reliable call-sorting alternative to selective routing. (Verizon Ex. 1.0 at 41-42.)

Under cross-examination by Staff, Intrado's witness admitted that he did not know how direct trunking might be implemented in a split wire center without some form of line attribute routing or class marking (Tr. at 81). And while Intrado states in its brief that its witness testified that "Verizon could also use the NPA/NXX method of routing 911 traffic as employed by some CLECs today" to deliver 911 calls to Verizon's selective routers (Intrado Br. at 43), what Mr. Hicks actually said was that he had "no direct knowledge" of how CLECs might be routing their calls to the appropriate selective router today. (Tr. 51; "[h]ow they do it, I cannot tell you.") In short, Mr. Hicks speculates that the CLECs must be using some method of call routing based on NPA/NXX codes, but he doesn't know exactly what it is or how it might work. So the record remains devoid of any evidence of a reliable call routing alternative to selective routing that could make Intrado's direct trunking proposal feasible.

In fact, NPA/NXX routing would not work for Verizon, for the very reasons Mr. Hicks himself identified. NPA/NXX codes are typically associated with exchange switches which overlap the political boundaries that define a 911 system. Because there is no correlation between NPA/NXX codes and political boundaries, and because routing on the basis of NPA/NXX codes would not account for number portability or split wire centers, this approach

would not be a feasible, reliable form of 911 call routing. (*See* Tr. at 50.)

Intrado advises the Commission that it should not concern itself with the call routing aspect of Intrado's direct trunking approach, but should simply leave it up to Verizon to figure out – and if Verizon is unable to do so, Intrado's solution is an action for breach of contract. (Intrado Br. at 42-43.) A breach of contract action, of course, will not help individuals whose 911 calls do not reach the right PSAP. While Intrado may be willing to take a cavalier stance toward critical 911 call routing issues, the Commission has shown itself unwilling to do so. Even if there were any law to support Intrado's direct trunking proposal (and there is not), the Commission would have to reject it for a fourth time.

ISSUE 6: WHETHER 911 ATT. § 1.1.1 SHOULD INCLUDE RECIPROCAL LANGUAGE DESCRIBING BOTH PARTIES' 911/E-911 FACILITIES.

Verizon's Initial Brief (at 35-36) already thoroughly addressed the arguments advanced by Intrado's initial brief with respect to this issue, so there is no need for any further rebuttal here. Verizon's proposed language for section 1.1.1 of the 911 Attachment accurately describes Verizon's network arrangements and capabilities and should be adopted.

ISSUE 7: WHETHER THE AGREEMENT SHOULD CONTAIN PROVISIONS WITH REGARD TO THE PARTIES MAINTAINING ALI STEERING TABLES, AND, IF SO, WHAT THOSE PROVISIONS SHOULD BE.

Intrado's position on Issue 7 is another appeal to change the law to suit Intrado. Intrado concedes that "[w]hen the ALI database function is provided as a stand-alone service, it is viewed as an information service," but despite this argues that in Intrado's planned 911 service, it is so intertwined with the switching and transmission components of Intrado's offering that one component would be "useless" without the others. (Intrado Br. at 49.) Intrado would thus treat the ALI (automatic location identification) database function as a telecommunications service appropriate for inclusion in a section 251/252 agreement, rather than an information service that does not belong in such an agreement.

There is no basis for Intrado's position. The FCC is fully aware of the interplay among the 911 database function and 911 call routing and switching and nonetheless has determined explicitly that the provision of caller location information to a PSAP is an information service.[24] Intrado's observation that there are different functions within the ALI database, which it claims Verizon's witness admitted, is irrelevant. Verizon's witness confirmed that the database is a single network facility. (Tr. at 164 ("the ALI database is a database that stores all the subscriber location information and it functions as a storage and retrieval system predominantly and typically for the wire line subscribers in a geographic area.") He then went on to describe the functions of and interplay of functions within the ALI database. (Tr. at 164-165.) That description does not support Intrado's claim that only the ALI database "function" should be considered an information service only on a stand-alone basis. The FCC's *ALI Information Services Order* recognized that "E911 services enable PSAPs and emergency service providers to retrieve information from the BOCs' automatic location identification databases. [note omitted] The BOCs may also permit PSAPs or other emergency agencies to store information regarding PSAP assignments and, in some instances, individual telephone subscribers in these databases. [note omitted] Because the BOCs' E911 services offer the capability for storing and retrieving information, they are information services, except to the extent they are used for the management, control, or operation of telecommunications systems or the management of telecommunications services." (*ALI Information Services Order* at ¶ 17.) The ALI database is not used for the management, control or operation of telecommunications systems or the management of telecommunications services. Rather, the ALI database, as described in testimony, is a "storage and retrieval system."

[24] *Bell Operating Companies Petition for Forbearance from Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities*, CC Docket 96-149, Memorandum Opinion and Order, 13 FCC Rcd 2627 (1998) ("*ALI Information Services Order*"), at ¶ 17.

Intrado's proposed ALI steering language is therefore not properly a subject for the interconnection agreement under arbitration. Moreover, Intrado and Verizon already have an ALI-related agreement that to Verizon's knowledge already provides Intrado with everything it needs to conduct its business with respect to ALI database arrangements between the parties. (*See* Verizon Br. at 37.)

ISSUE 8: WHETHER CERTAIN DEFINITIONS RELATED TO THE PARTIES' PROVISION OF 911/E911 SERVICE SHOULD BE INCLUDED IN THE INTERCONNECTION AGREEMENT AND WHAT DEFINITIONS SHOULD BE USED?

Verizon's Initial Brief (at 38-39) thoroughly rebuts each of Intrado's arguments over definitions, so there is no need to further address the parties' disputes here. The Commission should adopt Verizon's proposed definitions because they accurately reflect the structure of Verizon's network and the location and operation of Verizon's selective routers. Verizon's definitions add detail that more clearly describes the obligations, rights and responsibilities of the Parties under the agreement. They will, therefore, reduce the likelihood of future disputes between the Parties that may arise as a result of definitions, like Intrado's, that are vague and overly broad. (Verizon Ex. 1.0 at 62-68.)

ISSUE 9: SHOULD 911 ATT. § 2.5 BE MADE RECIPROCAL AND QUALIFIED AS PROPOSED BY INTRADO COMM?

Intrado's initial brief ignores the fact that Verizon already has offered appropriate interconnection agreement language providing reciprocity, in new Section 2.6 of Verizon's proposed agreement.[25] Intrado's argument on reciprocity, instead, is an excuse to try to put

[25] New Section 2.6 reads as follows:

> 2.6 Nothing in this Agreement shall be deemed to prevent Intrado Comm from delivering, by means of facilities provided by a person other than Verizon, 911/E-911 Calls directly to a PSAP for which Verizon is the 911/E-911 Service Provider.

See Verizon Ex. 1.0 at 68.

inappropriate qualifying language in the agreement that the direct 911 call delivery arrangements must be authorized by the PSAP. However, whether a party has a right to deliver calls to a PSAP is a matter between that party and the PSAP and is outside of the scope of the Intrado/Verizon agreement under arbitration. (Verizon Ex. 1.0 at 68-69; Verizon Br. at 39.)

ISSUE 10: WHAT SHOULD VERIZON CHARGE INTRADO COMM FOR 911/E-911 RELATED SERVICES AND WHAT SHOULD WILL INTRADO COMM CHARGE VERIZON FOR 911/E-911 RELATED SERVICES?

ISSUE 11: WHETHER ALL "APPLICABLE" TARIFF PROVISIONS SHALL BE INCORPORATED INTO THE AGREEMENT; WHETHER TARIFFED RATES SHALL APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; WHETHER TARIFFED RATES AUTOMATICALLY SUPERSEDE THE RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; AND WHETHER THE VERIZON PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH REGARD TO "TBD" RATES SHOULD BE INCLUDED IN THE AGREEMENT.

A. Intrado's Proposed Rates Are Not Warranted.

To support its rate proposals here, Intrado relies on the *Ohio Intrado/CBT Order* where, Intrado claims, the Commission determined that Intrado's proposed port or termination rates are "reasonable." (Intrado Br. at 57.) Intrado's claim is not supported by the facts.

The Commission didn't determine that Intrado's proposed rates for trunk ports (the only rates at issue in the CBT case) were "reasonable." Instead, it found that there was insufficient evidence in the record to answer the question as to whether Intrado's rates were reasonable. (*CBT/Intrado Order*, at 21.) Based on the "limited record," the Commission, therefore, determined that Intrado's rates appeared to be "not unreasonable," *and approved these rates for both Intrado and Cincinnati Bell* to the extent either party purchased trunk ports from the other. (*Id.* at 22.) Further, the Commission's rulings were based on its analysis that when Cincinnati Bell interconnected with Intrado to get Cincinnati Bell's 911 calls to an Intrado-served PSAP, that was *not a section 251(c)(2) interconnection,* but an arrangement under section 251(a) of the

Act – and an arrangement under which Cincinnati Bell was willing to take its traffic to Intrado. Because Cincinnati Bell did not propose a trunk port rate, the Commission found it reasonable to apply Intrado's rates to both parties. (*Id.* at 22.)

As Verizon explained in its Initial Brief, it has not sought interconnection with Intrado and has not agreed to take its traffic to Intrado; Intrado is instead seeking to force Verizon to interconnect under section 251(c). (Verizon Br. at 3.) Under section 251(c), Intrado must interconnect with Verizon on Verizon's network (which is not a requirement under section 251(a)). In short, there is no reason for trunk port charges here, because Verizon is not obligated, under section 251(c), to trunk its traffic to Intrado's network to interconnect on that network. Even aside from that, the Commission's solution was to order *rate parity*, and there is absolutely nothing in this record to show that Intrado's proposed port rates (if that is what they are) are comparable to any rates that Verizon charges other carriers to connect to its network. Indeed, when asked at the hearing to identify Verizon's trunk port termination charges, Mr. Currier, Intrado's witness, was unable to do so, instead falling back on his unsupported understanding that Verizon imposes such charges. (Tr. at 22.)

In addition, as Verizon has pointed out, Intrado has supplied no cost or other justification whatsoever to support its proposed rates. (Verizon Br. at 44; Verizon Ex. 1.0 at 74.) So even if it were appropriate for Intrado to apply some rate (and it is not, because Verizon is not required to interconnect on Intrado's network), Intrado's particular "port" and "termination" rates (which are not designated as such in Intrado's ambiguous pricing attachment) would have to be rejected as completely arbitrary.

The Commission should find, as the West Virginia Commission did, that "there will be no Intrado charges to Verizon" because the POI must be on Verizon's network. (*W.V. Award* at

24, 15.)

B. References to Verizon Tariff Rates Are Reasonable.

Intrado complains that Verizon's language would allow it to impose unspecified tariff rates for interconnection-related services. (Intrado Br. at 54.) Intrado also argues that ILECs' rates for interconnection and unbundled network elements must meet the standards reflected in section 252(d)(1) of the Act, and while Intrado recognizes that there may be non-252(d)(1) services that it may purchase from Verizon, it asserts those services and the pricing of those services must be set forth in the interconnection agreement. (Intrado Br. at 55.)

Intrado's complaints about general references to tariff rates in the interconnection agreement are unfounded. The limited products and services that Verizon is required to provide pursuant to section 252(d)(1) standards in the Act – that is, pursuant to the FCC's Total Element Long-Run Incremental Cost ("TELRIC") methodology, are already delineated (along with appropriate references to Verizon's tariffed rates) in the Appendix A to the Pricing Attachment. (Verizon Br. at 41.) And as Verizon already explained in its initial brief, generic tariff references are a standard part of Verizon's Commission-approved interconnection agreements with Verizon and have not caused the problems Intrado claims they will. (*See* Verizon Br., at 41.)

As Intrado's witness Currier acknowledged, Verizon maintains carrier-to-carrier tariffs, CLECs purchase facilities and services from Verizon that are not unbundled network elements (priced at TELRIC) from those tariffs (Tr. at 20), and Verizon's carrier-to-carrier tariffs must be filed with and approved by the Commission. (Tr. at 22.) Mr. Currier, like Verizon, could not identify all of the facilities, services, or network elements that Intrado may ever wish to purchase from Verizon, and he indicated Intrado would expect to pay whatever the posted (tariff) rates are for such services. (Tr. at 20-21.) Verizon's general references to tariffed rates are a standard feature of its interconnection agreements with other carriers, they are reasonable and should be

included in any Intrado/Verizon agreement that may result from this proceeding.

Intrado's opposition to tariff references appears to be rooted in the objective of gaining a competitive advantage over all other carriers that must abide by Verizon's tariffs. Indeed, Intrado suggests that it is entitled to TELRIC pricing for anything it might claim to need for "interconnection." As Verizon has explained, it must price at TELRIC only the specific elements the FCC has identified for such pricing. These elements, as well as appropriate references to Verizon's tariff rates, are already included in Appendix A to the Pricing Attachment. (Verizon Br. at 41; Verizon Ex. 1.0 at 71-72.)

Under the Pricing Attachment, Verizon must charge Intrado the same rates as it does to all other CLECs that take the services to which Intrado subscribes or to which Intrado may someday subscribe. There is nothing unfair or unworkable about including in Intrado's interconnection agreement the same pricing terms and tariff references that appear in virtually identical form in Verizon's other interconnection agreements the Commission has previously approved. Intrado's suggestion that the West Virginia Arbitration Award and the FCC's *Virginia Arbitration Order* support its position on Issue 11 (Intrado Br. at 59-60) is not relevant based on the record in this proceeding because Verizon is not seeking to have all of its rates determined by tariffs, and, in particular, in light of Intrado witness Mr. Currier's hearing testimony that Intrado would expect to pay posted (tariff) rates for services.

Indeed, this Commission rejected Intrado's arguments in the AT&T arbitration that the interconnection agreement should not contain references to AT&T's tariffs, noting that not all facilities and services are required to be priced at TELRIC and those that are not "are available to Intrado from AT&T's Access Tariff or via a separate contract, just as it would be for any CLEC." (AT&T/Intrado Order, at 21.) The Commission also rejected Intrado's argument that

all tariffs and tariffed services be specifically identified in the contract because "this seems to create for AT&T an impossible task of predicting what Intrado would desire to purchase. Even if it were to make such a prediction, such specificity may work against Intrado, as it could be understood to limit what Intrado might purchase from AT&T under this agreement." (*Id.* at 21-22.) The same rationale applies here. For all of these reasons, the Commission should reject Intrado's arguments regarding generic tariff references in the interconnection agreement.

ISSUE 12: WHETHER VERIZON MAY REQUIRE INTRADO COMM TO CHARGE THE SAME RATES AS, OR LOWER RATES THAN, THE VERIZON RATES FOR THE SAME SERVICES, FACILITIES, AND ARRANGEMENTS.

Intrado opposes capping its rates at the reasonable, Commission-approved rates of Verizon, thus leaving Intrado free to gouge Verizon with high prices. (Intrado Br. at 60.)

Intrado's cites from three other states are not persuasive authority for this Commission. As an initial matter, one of the three states – New York – decided a later case in which it adopted a rate parity proposal like that Verizon has proposed here: "We find Verizon's proposal to be reasonable, as it is premised on the established practice we employ."[26] And as Verizon has pointed out, rate parity proposals are common throughout the country in the reciprocal compensation and access contexts.

Regardless of the potential tally of state decisions on Verizon's side and those on Intrado's side, what matters most is this Commission's policy. In Ohio, it is reasonable and consistent with articulated Commission policy to require CLECs to cap their rates at the ILEC's level. (*See, e.g.* Ohio Adm. Code § 4901: 1-7-14(D) ("a facilities-based CLEC...shall cap their rates, at the current rates of the ILEC providing service in the CLEC service area for the termination and origination of intrastate switched access traffic...."); *In the Matter of*

[26] *Joint Petition of AT&T Comm. et al. Pursuant to Section 252(b) of the Telecom. Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc*, Order Resolving Arbitration Issues, at 86 (N.Y. P.S.C. July 30, 2001.)

Establishment of Carrier-to-Carrier Rules, Case No. 06-1344-TP-ORD, Opinion and Order, Aug. 22, 2007, at 57, and Entry on Rehearing, Oct. 17, 2007, at 17) If Intrado plans to charge rates higher than Verizon's rates for comparable services – which, unlike Intrado's rates, have been subject to thorough Commission scrutiny – it should be required to justify those rates with cost data.

ISSUE 13: SHOULD THE WAIVER OF CHARGES FOR 911 CALL TRANSPORT, 911 CALL TRANSPORT FACILITIES, ALI DATABASE, AND MSAG, BE QUALIFIED AS PROPOSED BY INTRADO COMM BY OTHER PROVISIONS OF THE AGREEMENT?

Intrado argues that its proposed language in §§ 1.7.2 and 1.7.3 of the 911 Attachment would ensure that each party's ability to bill the other would be limited by the interconnection agreement and the rates in the Pricing Attachment, to the extent such requirements or rates apply. (Intrado Br. at 61.) Intrado's proposed language for sections 1.7.2 and 1.7.3 of the 911 Attachment would undercut the parties' agreement not to bill for transport of 911/E-911 calls, and it erroneously assumes adoption of Intrado's network architecture proposal. Specifically, Intrado's proposed language improperly contemplates that Intrado could bill Verizon for interconnection or facilities for transport of 911/E-911 calls to Intrado's network. As discussed in Verizon's initial brief (at 45-46), any such charges are inappropriate, and certainly Intrado's unexplained and unsupported "interconnection" charges are inappropriate, as discussed in Issues 10 and 11. Therefore, the Commission should reject Intrado's proposed language in §§ 1.7.2 and 1.7.3.

ISSUE 14: SHOULD THE RESERVATION OF RIGHTS TO BILL CHARGES TO 911 CONTROLLING AUTHORITIES AND PSAPS BE QUALIFIED AS PROPOSED BY INTRADO COMM BY "TO THE EXTENT PERMITTED UNDER THE PARTIES' TARIFFS AND APPLICABLE LAW"?

Intrado contends that its proposed language is designed to ensure that neither party may operate outside Commission-approved rates or regulations of their retail services to PSAPs.

(Intrado Br. at 63.) While Intrado argues that its language is not an attempt to restrict Verizon's ability to charge PSAPs for services Verizon will continue to provide, it then goes on to argue at length why it believes Verizon will not be providing services to any PSAPs to which Intrado also provides services. (Intrado Br. at 63-64.) Indeed, in a footnote (note 328) accompanying this assertion, Intrado cites to a Florida proceeding in which Intrado sought a declaratory order that neither Intrado nor PSAPs would have an obligation to pay the ILECs' tariffed 911 charges when Intrado served the PSAP. There was no dispute in that case about the obvious fact that the law does not permit carriers to charge for services they don't provide; instead, Intrado's objective to deny other carriers compensation for services provided to Intrado-served PSAPs was clear to the intervenors and the Florida Commission. As the Commission stated in denying Intrado's request:

> Intrado either assumes that once it becomes the primary E911 provider to a PSAP, all ILEC 911 services to that PSAP will necessarily cease or it fails to consider the possibility that the ILECs may have to continue to provide certain ancillary 911 services to Intrado or to the PSAP in order for Intrado's primary E911 service to properly function, for which the ILECs are entitled to compensation pursuant to their tariffs. AT&T provided four examples of when it would arguably have to continue to provide compensable 911 service to PSAPs when Intrado is the primary E911 provider. Intrado's Response to AT&T's Motion to Dismiss and Response is silent with regard to that assertion.[27]

Thus, despite its protestations, Intrado's proposed language is designed to do exactly what Intrado asked the Florida Commission to do and what the Florida Commission explicitly declined to do. This Commission, too, should reject Intrado's position that there is never any reason for an ILEC to continue charging a PSAP for services the ILEC continues to provide when Intrado serves the PSAP. (*See, e.g.*, Tr. at 166-167; Verizon Ex. 1.1.) Intrado's proposed

[27] *See* Verizon Ex. 1.0 at 82-83, citing *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service, by Intrado Comm. Inc.*, Order Denying Amended Petition for Declaratory Statement, Order No. PSC-08-0374-DS-TP, at 14 (Fla. P.S.C. June 4, 2008).

language is not trying to state the obvious, benign principle that Verizon may not charge for services it is not providing; Intrado is instead trying to prevent Verizon from charging PSAPs (or Intrado) for services Verizon may still provide to PSAPs, even when a PSAP is an Intrado customer. The Commission should reject Intrado's attempt to do so, just as the Florida and West Virginia Commissions did. (*W.V. Arb. Award* at 28 n. 12.)

ISSUE 15: SHOULD INTRADO COMM HAVE THE RIGHT TO HAVE THE AGREEMENT AMENDED TO INCORPORATE PROVISIONS PERMITTING IT TO EXCHANGE TRAFFIC OTHER THAN 911/E-911 CALLS?

In support of its argument that it have the right to renegotiate the agreement to expand it to cover not only 911 calls, but all types of traffic carried by CLECs, Intrado argues: "This approach would save the Parties and the Commission the time and energy of renegotiating and re-litigating provisions that have already been resolved by the Parties." (Intrado Br. at 66.) This argument is misleading. Intrado is seeking to retain the benefit of any provisions it already obtained through negotiation or arbitration associated with 911/E-911 calls and then *add* to them new provisions associated with exchange of traffic *other than* 911/E-911 calls, so Intrado's argument about re-litigation of the same provisions does not make sense. Consistent with the FCC's § 252(i) adoption rule, 47 CFR § 51.809, which prohibits CLECs from being able to "pick-and-choose" favorable contract terms and conditions, the Commission should find that, if Intrado wishes to greatly expand the scope of the agreement, it should terminate the agreement and negotiate an entirely new agreement. (*See* Verizon Ex. 1.0 at 85.)

As Verizon observed in its Initial Brief, absent a change in law affecting provisions of the agreement which would allow a Party to request an amendment to the agreement (*see* § 4.6, General Terms and Conditions), Intrado should not have a unilateral right to seek an amendment to the agreement. (Verizon Br. at 49; Verizon Ex. 1.0 at 84.) In a new twist, Intrado argues for the first time in its brief that an order modifying Intrado's certificate of service authority would

constitute a change of law as contemplated in the change of law provision in section 4.6. (Intrado Br. at 66-67.) While Verizon does not concede that such an event would constitute a change of law, if Intrado believes that is the case, there is no reason for its proposed section 1.5.

In short, it is not appropriate to allow Intrado to retain the benefit of any provisions already obtained through negotiation or arbitration and then seek the benefit of additional provisions associated with exchange of traffic other than 911/E-911 calls. The parties negotiated this agreement based on the limited nature of Intrado's proposed business plan to provide 911 network services to PSAPs. If Intrado wishes to greatly expand the scope of the agreement, it should negotiate a new agreement in which all of the provisions will be at issue and the parties will be able to engage in a fair and balanced trade-off of one provision against another. The Commission should reject Intrado's proposed language in section 1.5 of the General Terms and Conditions, as the West Virginia Commission did. (*W.V. Award*, at 26.)

ISSUE 16: SHOULD THE VERIZON-PROPOSED TERM "A CALLER" BE USED TO IDENTIFY WHAT ENTITY IS DIALING 911, OR SHOULD THIS TERM BE DELETED AS PROPOSED BY INTRADO COMM?

Verizon's initial brief (at 67-68) already thoroughly addressed Intrado's arguments with respect to these issues, so there is no need for any further rebuttal here.

III. CONCLUSION

For all of the reasons in Verizon's testimony and its Initial and Reply Briefs, Verizon asks the Commission to adopt its positions and associated contract language with respect to all the issues in this arbitration.

Respectfully submitted,

Dated: March 6, 2009

Verizon North Inc.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon all parties listed below, by electronic service, this 6th day of March, 2009.

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Attachment 1

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Intrado, Inc.	:	
	:	
Petition for Arbitration pursuant to	:	
Section 252(b) of the Communications	:	**08-0545**
Act of 1934 as amended, to Establish	:	
an Interconnection Agreement with	:	
Illinois Bell Telephone Company.	:	

PROPOSED ARBITRATION DECISION

By the Commission:

I. PROCEDURAL HISTORY

On September 22, 2008, Intrado, Inc. ("Intrado"), filed a Petition for Arbitration ("Petition") pursuant to subsection 252(b)[1] of the federal Telecommunications Act of 1996 ("Federal Act")[2]. The Petition seeks to create an interconnection agreement ("ICA") between Intrado and Illinois Bell Telephone Company ("AT&T"), an incumbent local exchange carrier ("ILEC") in certain geographic areas of Illinois. Intrado has certificates of telecommunications operating authority in Illinois, issued by this Commission.[3] Intrado asserts that AT&T has a duty under subsection 251(c)(2) of the Federal Act[4] to interconnect with it, so that Intrado can provide telecommunications services in areas in which AT&T also provides local exchange services. Intrado's principal intention is to provide services related to 911/E911 telecommunications (for brevity, "911 service") to Emergency Telephone Systems Boards ("ETSBs") for the operation of Public Safety Answering Points ("PSAPs"). Intrado presents several issues for arbitration.

AT&T filed its Response to Intrado's Petition ("AT&T Response") on October 17, 2008. In that filing, AT&T notes that it has added two issues for arbitration, as it is permitted to do under subsection 252(a)(4)(A) of the Federal Act[5]. The parties have settled numerous issues over the course of this litigation and this Arbitration Decision addresses only the remaining unresolved issues.

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[1] 47 U.S.C. § 252(b).
[2] 47 U.S.C. §§ 151 *et seq.*
[3] SCC Communications Corp., Application for a Certificate of Authority to Provide Telecommunications Services in the Stare of Illinois, Dckt. 00-0606, Order, Dec. 20, 2000 & Amendatory Order, Jan. 31, 2001. SCC subsequently became Intrado, Inc. Intrado is certificated to provide intrastate facilities-based and resold local and interexchange telecommunications services.
[4] 47 U.S.C. § 25(c)(2).
[5] 47 U.S.C. § 252(a)(4)(A).

Two Administrative Law Judges ("ALJ's") of the Commission conducted a pre-arbitration conference on October 1, 2008 and an evidentiary hearing on December 3, 2008, each in Chicago, Illinois. Appearances were entered at each hearing on behalf of Intrado, AT&T and Commission Staff ("Staff"). At the December 3 hearing, Intrado presented the testimony of Thomas Hicks, and Carey Spence-Lenss. AT&T presented the testimony of Patricia Pellerin and Mark Neinast. Staff presented the testimony of Jeffrey Hoagg, Marci Schroll, and Kathy Stewart, each of the Commission's Telecommunications Division. The ALJ's marked the evidentiary record "heard and taken" on February 4, 2008.

Intrado, AT&T and Staff each filed an Initial Brief ("IB") on January 5, 2009 and a Reply Brief ("RB") on January 20, 2009. An ALJ's Proposed Arbitration Decision was served on all parties on February 13, 2008. The Parties each filed Briefs on Exceptions ("BOE") on February 20, 2009 and Reply Briefs on Exceptions ("RBOE") on February 27, 2009.

II. JURISDICTION

Subsection 252 of the Federal Act provides that within a specified time period "after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." Both Intrado's Petition and AT&T's Response assert that there are open issues between the parties. There is no dispute that the Petition was timely filed. Consequently, the Commission has jurisdiction to arbitrate the issues presented.

Section 252 of the Federal Act proscribes certain procedures, standards and outcomes for arbitrations conducted under that section. In addition, the Commission has adopted rules and procedures for such arbitrations in 83 Ill.Adm.Code 761. The foregoing federal and state provisions apply to this proceeding.

III. PROPOSED SERVICES & CURRENT AGREEMENTS

Intrado proposes to provide its 911 service through its Intelligent Emergency Network® ("IEN"), which would facilitate voice and data transmission and retrieve and deliver both Automatic Number Identification ("ANI") (the calling party's telephone number) and Automatic Location Information ("ALI") (the calling party's location) to PSAP customers. The three integrated elements of Intrado's system are switching (utilizing selective call routers or 911 tandems), call information databases (for ANI and ALI) and transport infrastructure between the PSAP and, respectively, the selective routers and the information databases.

Intrado's customers will be PSAPs and related public agencies, not the individual end-users that initiate 911 calls. With respect to wireline telecommunications, the physical components of Intrado's 911 service will not handle a 911 call until it has been

relayed from the end office of the ILEC receiving the call. Consequently - and regardless of whether Intrado is "interconnected" to AT&T within the meaning of subsection 251(c)(2) of the Federal Act - Intrado's 911 service must be physically linked to the public switched telephone network ("PSTN") in order to deliver wireline 911 calls to PSAPs. All telecommunications carriers have an interconnection duty under subsection 251(a)(1) of the Federal Act, and AT&T states that it would enter into a "commercial agreement" with Intrado, as it has with other carriers, to provide the necessary physical linkage. AT&T Ex. 1.0 (Pellerin) at 6. Intrado maintains that its 911 service qualifies for interconnection within the meaning of subsection 251(c)(2) and that Intrado is therefore entitled to the statutory benefits associated with such interconnection.

Intrado does not presently provide the 911 service involved in this proceeding in Illinois. Intrado Ex. 1 (Hicks) at 5. There are two current agreements between Intrado and AT&T for processing voice-over-Internet Protocol ("VOIP") traffic from third parties, under which AT&T supplies telephone exchange service and other services to Intrado. AT&T Ex. 1.0, Sch. PHP-9 (Intrado response to AT&T Data Request 5). There is also an expired ICA, by which Intrado could have transported 911 calls aggregated from third parties. *Id.* Intrado did not conduct operations under that ICA. AT&T Ex. 1.0 at 5; Tr. 160-61 (Pellerin).

IV. ISSUES FOR RESOLUTION

Issue 1:

Does Intrado have the right to interconnection with AT&T under Section 251(c) of the Act for Intrado's Provision of competitive 911/E911 services to PSAPs?

A. Parties Positions and Proposals

1. Intrado

Intrado maintains that AT&T is required by subsection 251(c)(2) of the Federal Act to provide interconnection to Intrado because, among other reasons, Intrado intends to furnish "telephone exchange service" within the meaning of subsection 251(c)(2)(A). There are two alternative definitions of "telephone exchange service" in the Federal Act[6], and Intrado avers that its proposed services comport with either alternative (Parts A and B). According to Intrado, the Federal Communications Commission ("FCC") has taken an expansive view of telephone exchange service, placing non-traditional arrangements such as DSL-based service and directory assistance call completion service within that category. Intrado contends that its proposed handling of 911/E911 transmissions should be similarly regarded as telephone exchange service. That result, Intrado believes, would further the pro-competitive policy reflected in the Federal Act.

[6] The definitions appear at 47 USC §153(47).

Intrado relies on certain FCC decisions for the proposition that the "key component" of telephone exchange service is that it enables "intercommunication" among a "community of subscribers" within an exchange area. Intrado asserts that its proposed 911 service will perform this intercommunicating function by connecting end-users and Intrado's PSAP subscribers. Intercommunication does not require that a proposed service supplant a subscriber's existing local service in order to qualify as telephone exchange service, Intrado argues.

Moreover, Intrado stresses, this Commission has already determined that Intrado provides "telephone exchange service," in a previous arbitration involving predecessors of, respectively, Intrado and AT&T[7]. In that proceeding, the Commission held that the service contemplated by Intrado's successor "falls within the definition of telephone exchange service found in 47 USC §153(47)."[8]

Intrado also emphasizes that AT&T, in effect, characterizes its own 911 service as telephone exchange service in its tariffs. Intrado alleges that its 911 service tariff is substantially similar to AT&T's and should also be regarded as telephone exchange service.

2. AT&T

AT&T argues that Intrado's proposed service is not "telephone exchange service" within the meaning of the Federal Act. For that reason, AT&T asserts, Intrado is not entitled to either subsection 251(c)(2) interconnection or an arbitrated ICA with AT&T. Specifically, AT&T contends that Intrado's 911 service does not permit subscribers to originate an outbound telecommunications transmission, as Part B of the federal definition requires (a requirement AT&T would also read into Part A). The public agencies using Intrado's service will need to subscribe to the telephone exchange service of another provider to initiate an outbound or non-911 call. AT&T emphasizes that the Florida Public Service Commission dismissed Intrado's arbitration requests with AT&T's Florida affiliate[9] and with another ILEC[10] precisely because, that Commission found, Intrado's 911 service does not enable call origination.

Intrado's 911 service also falls outside the definition of telephone exchange service, AT&T charges, because it is not the intercommunicating service explicitly required by Part A (and, according to the FCC, implicitly required by Part B) of

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[7] In the Matter of the Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc., Dckt. 00-0769 (March 21, 2000) ("SCC Arbitration"). As previously noted, SCC did not conduct operations under the ICA resulting from that proceeding.

[8] *Id.*, at 6.

[9] Petition by Intrado Communications, Inc., for Arbitration with BellSouth Telecommunications, Inc., d/b/a AT&T Florida, Fla. Pub. Serv. Comm'n. Dckt. 070736-TP, Final Order (Dec. 3, 2008).

[10] Petition by Intrado Communications, Inc., for Arbitration with Embarq Florida, Fla. Pub. Serv. Comm'n. Dckt. 070699-TP, Final Order (Dec. 3, 2008).

§153(47). Intercommunication means that an end-user can call the other end-users in the exchange area, and not merely a pre-designated PSAP, AT&T maintains.

AT&T further avers that Intrado's planned service is not "within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area," as expressly required by Part A of the pertinent definition. Nor, AT&T insists, is Intrado's service covered by the "exchange service charge," as Part A also specifies.

As for this Commission's conclusions in the SCC Arbitration, AT&T argues that the telecommunications services involved in the present case are different and that our earlier analysis was inconsistent with certain FCC orders issued prior to or contemporaneous with that arbitration decision.

AT&T additionally suggests that this Commission has the discretion to decline to arbitrate the unresolved issues in this case, and that we can use that discretion in order to await the results of arbitration decisions elsewhere.

3. Staff

Staff maintains that Intrado is entitled to subsection 251(c) interconnection with AT&T, principally because the Commission previously reached that conclusion in the SCC Arbitration. As Staff sees it, "Intrado proposes to provide essentially the same service here as it proposed to provide in" that case. Staff IB at 10. Staff cautions, however, that the terms and conditions of Intrado's interconnection should closely conform to the requirements of subsection 251(c), despite Intrado's request, in certain instances, for non-traditional arrangements. In Staff's view, Intrado should not be permitted to claim the benefits of the Federal Act while simultaneously avoiding its requirements.

4. Analysis and Conclusions

As framed by the parties, the fundamental question in Issue 1 is whether Intrado's 911 service constitutes "telephone exchange service" under Part A or Part B in §153(47). The full statutory definition of "telephone exchange service" is as follows:

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

Given that §153(47) presents two alternative definitions conjoined by "or," a provider's service can constitute telephone exchange service under either alternative. The FCC has not commented on whether stand-alone 911 service like Intrado's is telephone exchange service. For purposes of comparison, the FCC has held that directory assistance call completion[11] and xDSL-based advanced services[12] are telephone exchange service, but paging service is not[13].

Although Intrado and AT&T dispute the meaning of several elements in the alternative definitions of telephone exchange service, two elements warrant particular emphasis – call origination and intercommunicating service. Call origination is significant because the Florida Commission rejected Intrado's claim that 911 service is telephone exchange service, on the ground that the service does not include call origination[14]. Intercommunicating service is essential because, as Intrado correctly observes, the FCC has called it the "key criterion for determining whether a service falls within the scope of the telephone exchange service definition."[15]

Intrado and AT&T have each commingled their discussion of call origination and intercommunicating service. Intrado addresses both elements in a single sub-heading in its Initial Brief, at 6. AT&T contends that call origination and termination are "part and parcel" of intercommunicating service. AT&T IB at 7, fn. 6. The Commission does not

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[11] Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended, 16 FCC Rcd. 2736 (2001) ("Directory Assistance Order").

[12] In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, 15 FCC Rcd. 385 (1999) ("Advanced Services Order").

[13] In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd (1996).

[14] The parties dispute whether the Florida Commission is the only state commission to decide this issue during the current round of Intrado interconnection filings. Intrado contends that the Ohio Commission "specifically determined that Intrado's [911 service] is telephone exchange service." Intrado RB at 10, citing Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services, P.U.C.O. Case No. 07-1199-TP-ACE, Finding and Order (Feb. 5, 2008) ("Ohio Certification Order"). AT&T rejoins that Intrado misrepresents the Ohio decision. AT&T RB at 21. We note that the Ohio proceeding was a certification proceeding, not an interconnection arbitration. The Ohio Commission concluded that end-users have "no relationship" with Intrado and that Intrado is not a CLEC. Ohio Certification Order, Finding 7. However, the Ohio Commission created a new carrier category for Intrado ("competitive emergency services telecommunications carrier") and stated that "Intrado is a telecommunications carrier *engaged in* the provision of telephone exchange service pursuant to Section 251 of the [Federal Act]". *Id.* (emphasis added). In a subsequent interconnection arbitration, Petition of Intrado Communications, Inc. for Arbitration to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company, P.U.C.O. Case No. 08-537-TP-ARB, Arbitration Award (Oct. 8, 2008), the ILEC and Intrado debated the meaning of "engaged in" in the Ohio Certification Order, with the ILEC claiming that the Commission was merely acknowledging that Intrado's 911 service performed a function within *other carriers'* telephone exchange service. The Ohio Commission did not address that argument directly and ordered the parties to incorporate the disputed language in their ICA without further interpretation. The Ohio Commission ultimately ordered the parties to interconnect, but pursuant to Section 251(a) of the Federal Act when Intrado is a PSAP's 911 provider (*i.e.*, the service Intrado seeks to offer here). Intrado-Cincinnati Bell Arbitration, Entry on Rehearing (Jan. 14, 2009). Neither carrier party requests that we replicate the Ohio arbitration result here by turning to subsection 251(a).

[15] Advanced Services Order, para. 26.

agree that call origination/termination and intercommunicating service are the same thing. When Congress added Part B to the §153(47) definition, it employed different language (origination/termination) rather than re-employing "intercommunicating service" in the new sub-part. Moreover, the FCC would not have needed to read an intercommunicating service requirement into Part B, as it did in the Advanced Services Order[16], if intercommunicating service already carried the same meaning as call origination/termination. In this Commission's view, intercommunication pertains to the accessibility of end-users to each other, while origination/termination pertains to an individual end-user's ability to initiate or receive a call[17]. Accordingly, these elements will be addressed separately here.

(a.) Call Origination

To analyze the call origination requirement in the context of emergency services, the Commission finds it helpful to describe 911 communications. The emergency response system is designed for urgent circumstances. Callers need only enter three universally recognized digits into a telecommunications path specifically created for those circumstances. To minimize the potential for error, failure or overload, the telecommunications path is not designed for calls in the opposite direction (from PSAPs to emergency sites). Indeed, in Illinois, 911 service is defined as "a terminating only service"[18] and outbound calls on 911 circuits are prohibited[19].

Intrado has appropriately included these facts and policies in its proposed 911 service[20]. Intrado thus acknowledges that its 911 service does not include the capability to originate a call (except via transfer by the PSAP of an inbound call placed by a 911 end-user). A PSAP that subscribes to Intrado's 911 service will need one or more additional telephone lines, not associated with 911 service, to originate calls[21]. The PSAP will not be able to return the call of a 911 end-user via Intrado's 911 service if a call is dropped. AT&T Ex. 1.0 at 21.

Nevertheless, Intrado maintains that its 911 service furnishes call origination within the meaning of the federal definition. As Intrado sees it, the call transfer mechanism (which Intrado also refers to as "hookflashing") is a form of call origination by the subscribing PSAP. As Intrado witness Spece-Lenss described in oral testimony:

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[16] Advanced Services Order, para. 20.
[17] In the practical sense, of course, a telecommunications end-user must be able to originate or terminate communications with other accessible users. But for statutory construction, we are obliged to discern the intended meaning of each of the discrete terms chosen by the legislature.
[18] 83 Ill. Adm. Code 725.500(a).
[19] 83 Ill. Adm. Code 725.500(d).
[20] "Intrado has purposefully designed its 911 service to be unable to originate an outgoing call except in the instance of conferencing or call-transfer disconnect processes." AT&T Cross-Ex. 3 (Intrado response to AT&T Data Request 18).
[21] "Illinois public safety agencies subscribe to local exchange service for administrative purposes, such as to receive other emergency or non-emergency calls, including any which might be relayed by operators or terminated on PSTN-accessible local exchange telephone lines." Intrado IB at 21.

> [T]he call process has two parts. You have the consumer, the citizen who is dialing 911. The PSAP receives the call and then the PSAP originates the transfer. So it's originating the call through the hook flash, either the selective transfer feature or the 10-digit transfer feature and it's originating the call.

Tr. 110.

The Florida Commission rejected this argument and denied Intrado's request for subsection 251(c)(2) interconnection on that basis. The Florida Commission did not elaborate upon its conclusion, perhaps because it found it self-evident. Although this Commission will supply additional discussion of this issue, we will reach the same conclusion as the Florida Commission.

Simply, hookflashing is not call origination. It is a call transfer procedure that reroutes a call *originated by the person placing the inbound 911 call to the PSAP*. While Intrado is correct that call transfer is commonly used, Intrado IB at 14, that does not mean it is a call origination mechanism. That is particularly so in the 911 context in Illinois, in which call transfer, as defined by our regulations, is limited to rerouting of the originated call to an emergency services provider or another PSAP ("'Call Transfer' – a 9-1-1 service in which the PSAP telecommunicator receiving a call transfers that call to the appropriate public safety agency or another provider of emergency services"[22]). We believe that the reference to "that call" in our regulatory definition is significant, because it captures what in fact occurs during an emergency call transfer – the PSAP works collaboratively with an emergency responder or another PSAP to address the ongoing request for assistance. The Commission therefore disagrees with the viewpoint of Intrado's witness who "wouldn't consider it the same call when a PSAP [needs] to do a transfer." Tr. 112 (Spence-Lenss). Indeed, Intrado's own tariff characterizes call transfer as the "[t]he act of adding an additional party to an *existing call*."[23]

The call transfer capability in Intrado's planned service thus reflects the limited scope of transferability contemplated in the 911 architecture. Such transfers are confined to other PSAP's served by Intrado, although transfers to non-Intrado PSAPs and related public safety agencies are possible if certain infrastructure and arrangements are in place with Intrado[24]. Moreover, PSAP-to-PSAP call transfer capability is not mandated by law, Staff Ex. 2 at 13, and Intrado (and AT&T) would only implement it (through interconnection of selective routers) upon customer request.

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[22] 83 Ill. Adm. Code 725.105.

[23] AT&T Ex. 1.0, Sch. PHP-3, P.U.C.O. Tariff No. 1, Sec. 1, Orig. Page 1 (definition of "Call Transfer or Call Bridging") (emphasis added). Intrado describes its Illinois tariff, which was not offered for the record here, as "similar" to its Ohio tariff. Intrado IB at 20, fn. 85.

[24] Specifically, Intrado can transfer calls to "any Intrado served PSAP, to other non-Intrado served PSAPs if the non-Intrado served PSAP's service provider has deployed the selective router-to-selective router feature and is interconnected with Intrado's national network, and to any authorized agency that is directly interconnected to the nationwide Intrado 911/E911 network." AT&T Cross Ex. 4 (Intrado response to AT&T Data Request 20).

Intrado Ex. 2 at 11. Thus, insofar as call transfer by an Intrado-served PSAP will be technically enabled, it will be appropriately limited to continuous handling of the caller-originated assistance request.

Although it is not entirely clear (given the parties' commingled analyses of call origination and intercommunication), Intrado apparently suggests an analogy between its 911 call transfer function and the DA services that the FCC found to be telephone exchange service in the Directory Assistance Order. If that is so, the Commission does not find the analogy apt. In the Directory Assistance Order, the FCC held that DA providers perform telephone exchange service when they furnish call completion service (that is, when they enable the party requesting number lookup to place a call to the requested number). Without call completion, "the competing directory assistance provider is not providing telephone exchange service within the meaning of section 3(47)."[25] In the Illinois 911 context, an Intrado-served PSAP (or any other PSAP) could not originate a new communication with a party of the 911 caller's choice for a purpose unrelated to the emergency at hand. The PSAP can only transfer the call, without terminating it, to a single authorized respondent[26], and may continue to participate in the call[27]. That is not like DA call completion, which originates a new call to the end-user's selected destination somewhere in the exchange area, without further involvement by the DA provider (who may provision number look-up and call completion without live human participation).

Nonetheless, this Commission did conclude, in the SCC Arbitration, that Intrado (as SCC) provided a service "by which a subscriber can originate and terminate an emergency or 9-1-1 call."[28] However, the 911-related services SCC proposed to provide in 2001 are not the same as Intrado's proposed 911 service here and they differ meaningfully with respect to call origination. SCC customers included ILECs, CLECs and wireless carriers, for whom it intended to deliver originated 911 traffic to AT&T's (then, Ameritech's) selective routing tandems, for transmission to an appropriate PSAP[29]. SCC did not intend to serve PSAPs, the terminators of 911 traffic. AT&T Ex.

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[25] Directory Assistance Order, para. 22.

[26] "A 9-1-1 system should be designed so that a call will never be transferred more than once." 83 Ill. Adm. Code 725.505(g).

[27] Indeed, the transferring PSAP *must* remain involved with the call until it is safe to disengage. "At such time as the telecommunicator verifies that the transfer has been completed *and the telecommunicator's services are no longer required*, the telecommunicator may manually release himself from the call." *Id.* (emphasis added). Intrado's Ohio 911 tariff is consistent with this requirement and it reflects the fact that call handling by a PSAP does not usually end at transfer. "The term `Call Bridging' is preferred because 9-1-1 call handlers rarely transfer calls without staying connected to ensure the call is effectively handled (no `blind' transfers)." AT&T Ex. 1.0, Sch. PHP-3, P.U.C.O. Tariff No. 1, Sec. 1, Orig. Page 1 (definition of "Call Transfer or Call Bridging").

[28] SCC Arbitration at 6.

[29] SCC Arbitration at 5. The Commission notes that its discussion of the SCC proceeding is based solely on the final Arbitration Decision there. Neither the Commission nor the parties can utilize other matter from that docket for decision-making purposes in this case, unless it has been admitted as record evidence here. One mechanism for admitting such matter is administrative notice, pursuant to 83 Ill. Adm. Code 640(2) & (3). Administrative notice was not utilized in this case, and matter filed in Docket 00-0769 did not enter the record here by other means. Consequently, Intrado's citation to its filing in Docket

1.0 at 20 (Pellerin). In the present case, Intrado's service will begin at the selective router and proceed to the PSAP. Intrado does not intend to "aggregate originating 911 calls from other carriers for delivery to [AT&T's] selective routers," AT&T Ex. 1.0, Sch. PHP-9, and it does not intend to "provide non-wire line telephone exchange service to customers in Illinois." *Id.* Thus, Intrado will not enable 911 call origination for any party[30], much less for its subscriber PSAPs (the relevant entity for purposes of Part B of the federal definition of telephone exchange service). Accordingly, the Commission will not repeat here our conclusion in the SCC Arbitration that Intrado originates telecommunications service.

In sum, the Commission finds that Intrado's 911 service does not enable a subscriber to initiate telecommunications service within the meaning of Part B of the federal definition of telephone exchange service.

(b.) Intercommunicating Service (or "Intercommunication")

As previously noted, while intercommunicating service is not an explicit element of Part B of the statutory definition of telephone exchange service, the FCC regards it as part of the requisite comparability among services under Parts A and B[31]. This Commission defers to the FCC's interpretation of the Federal Act. Therefore, Intrado's 911 service must provide intercommunicating service in order to constitute telephone exchange service under either part of the federal definition.

Despite their opposing views of Intrado's 911 service with respect to intercommunication, both Intrado and AT&T cite the same text in the Advanced Services Order: "a service satisfies the 'intercommunication' requirement of section 3(47)(A) as long as it provides customers with the capability of intercommunicating with other subscribers."[32] The parties also each rely on the same language in both the Advanced Services Order and the Directory Assistance Order that intercommunicating service "refers to a service that permits a community of interconnected customers to make calls to one another."[33]

00-0769 (which we understand to have been made in good faith), appearing in Intrado's RB at 11, fn. 52 (and any similar citation by any participant here), cannot be considered.

[30] We note that Intrado is not authorized to provide dial tone in Illinois. In its certification proceeding in this state (as SCC), Intrado expressly stated that it would not supply dial tone, SCC Communications Corp., Application for a Certificate of Authority to Provide Telecommunications Services in Illinois, Dckt. 0-0606, Order at 2 (Dec. 20, 2000) and Amendatory Order, (Jan. 31, 2001) (together, "SCC Certification Order"), and we included that fact in formal findings (Findings 6 & &) in that case.

[31] "Because we find that the term 'comparable' means that the services retain the key characteristics and qualities of the telephone exchange service definition under subparagraph (A), we reject the argument that subparagraph (B) eliminates the requirement that telephone exchange service permit 'intercommunication' among subscribers within a local exchange area." Advanced Services Order, para. 30.

[32] Advanced Services Order, para. 23; cited at Intrado IB at 13 and AT&T IB at 6.

[33] Advanced Services Order, para. 23; Directory Assistance Order, para. 17; cited at Intrado IB at 13 and AT&T IB at 6.

The parties interpret the quoted terms differently, however. AT&T asserts that virtually *all* customers in an exchange area must be able to intercommunicate with virtually *all other* customers in the exchange area via the requesting carrier's service. AT&T IB at 6-7. Intrado argues that the interconnected community need only consist of the intended subscriber (a PSAP) and its potential "customers" (persons needing emergency services) with the exchange area. The issue thus framed by the parties is whether intercommunicating service must inter-link (like a traditional CLEC) all potential subscribers or just the providers and potential users of a niche service (in this case, 911 service).

While the FCC has not precisely defined the scope of intercommunication that a provider must offer to meet the definition of telephone exchange service, the inferences reasonably drawn from the cited FCC decisions do not favor Intrado. In the Directory Assistance Order, on which Intrado places considerable reliance, the FCC concluded that certain DA providers furnish the requisite intercommunication for telephone exchange service[34]. But, as discussed above, the key attribute of such DA service, the FCC found, is not the basic number look-up function. Rather, it is the call completion service (to the caller's requested telephone number) that certain DA providers offer[35]. Call completion enables the end-user to reach telecommunications customers beyond the DA service provider.

Thus, nothing in the Directory Assistance Order suggests that performing traditional number look-up service, or establishing a part of the telecommunications pathway for performing that service, constitutes the requisite intercommunication for telephone exchange service. Intercommunication between callers and DA number retrieval systems (or live personnel) is not enough. The caller must be able to communicate, via the DA provider's service, with other interconnected telecommunications customers. Is Intrado's 911 service, then, sufficiently like the call completion service the FCC characterized as an intercommunicating service?

As discussed above, Intrado's planned service permits the personnel of its PSAP customer to receive an inbound emergency call and transfer it, when necessary, to another PSAP. The transferring PSAP remains involved in the call, at least initially, via the conference function. Such transfers are limited to other PSAP's served by Intrado (and to non-Intrado PSAPs and related agencies under certain circumstances previously described). Such transfers remain within the designated 911 network (Intrado's or - with connected selective routers - another 911 telecommunications provider's), in order to retain ALI and properly provide the emergency response that the caller seeks. Tr. 74 (Hicks).

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[34] The Commission notes that the Directory Assistance Order did not address interconnection under subsection 251(c)(2) of the Federal Act. Rather, the FCC considered whether DA providers furnish telephone exchange service for the purpose of determining their eligibility for nondiscriminatory access to ILEC DA databases under subsection 251(b)(3).

[35] Moreover, not all call completion falls within the statutory definition. Call completion has to occur through the DA's own facilities or via resale, with a separate charge to the caller. Directory Assistance Order, para. 22.

The Commission therefore finds that Intrado's call transfer capability is not sufficiently like the call completion service that met the intercommunication test in the Directory Assistance Order. In the DA context, after the caller obtains information from the DA provider, s/he can elect to communicate with a large and diverse number of other telecommunications customers connected to the PSTN in the exchange area (at least those customers with published numbers), for purposes entirely different than the purpose of the initial call to the DA provider (*i.e.*, to obtain a telephone number). In contrast, Intrado's 911 service permits no more than a transfer to another PSAP for further (and joint) handling of the original purpose of the call. Thus, the "community of interconnected customers" made accessible to the DA caller is dramatically different than the single transferee made accessible through Intrado's 911 service.

In the Advanced Services Order, on which Intrado also relies, the FCC held that telecommunications accomplished through xDSL-based advanced services provide intercommunication (and constitute telephone exchange service)[36]. The FCC rejected an ILEC's suggestion that the relevant xDSL-based service was analogous to private line service[37], which is not telephone exchange service. Although an xDSL subscriber must initially designate an internet service provider or other third-party for receipt of high speed data transmissions, the FCC emphasized that the subscriber, "with relative ease," can "rearrange the service to communicate with any other subscriber on [the packet switched] network."[38] The FCC also stressed that the customer can perform that rearrangement without disconnecting service or requesting an additional line. In contrast, a private line subscriber would have to order an additional line to communicate with additional telecommunications customers.

A comparison between xDSL-based advanced services and Intrado's 911 service can be performed from the perspective of the end-user or the PSAP subscriber. For the end-user, 911 service enables communication only with a predetermined PSAP served by Intrado. At most, the PSAP can, in turn, transfer the call to another PSAP (also served by Intrado, unless there are connected selective routers). Transfer is not at the end-user's behest, and the end-user, by design, cannot communicate with any other person or entity via 911 dialing. From the PSAP's perspective, call transfer is the only enabled and permissible outbound telecommunications option under Intrado's service. Any other outbound call, including a call-back to the end-user, requires an additional administrative line over the PSTN.

The Commission finds it significant that the FCC did not reject the ILEC argument in the Advanced Services Order that "services offered over a predesignated transmission path do not constitute telephone exchange service."[39] Rather, it found the cases cited in support of that argument "readily distinguishable," because the services

[36] Advanced Services Order, para. 24.
[37] Private line service is "a service whereby facilities for communications between two or more designated points are set aside for the exclusive use or availability of a particular customer and authorized users during stated periods of time." 47 CFR §21.2.
[38] Advanced Services Order, para's. 24 & 25.
[39] *Id.*, para 25.

involved in those cases were offered via private lines. While AT&T implies that Intrado's 911 service is equivalent to private line service, AT&T RB at 7, the Commission need not and does not reach that conclusion. For our purposes here, we simply determine that Intrado's 911 service is not sufficiently similar to xDSL-based advanced services to sustain a finding, based on the Advanced Services Order, that Intrado's 911 service provides intercommunication. The services involved in the Advanced Services Order afforded the end-user subscriber substantially greater access to, and control over, communication with other subscribers and end-users than does Intrado's 911 service, which enables communication solely between end-users and a designated PSAP (with possible call transfer to another PSAP).

That said, the Commission is mindful of Intrado's recommendation to interpret these FCC decisions broadly, with a predilection toward fostering competitive entry. That is a constructive request, and the Commission has endeavored to ascertain the meaning of each relevant decision as a whole. Intrado is correct that the FCC has construed the Federal Act in a manner that accommodates technological advancement and advanced product offerings. The FCC has not, however, relaxed the intercommunication requirement.

In the Advanced Services Order, for example, the FCC determined that, "in this era of converging technologies," it would not limit the federal definition to voice service[40] and it would construe the law to include packet switching (along with the traditional circuit switching). But the FCC did not modify the scope of the "community of interconnected customers"[41] necessary for telephone exchange service. To the contrary, it reiterated that it had "long interpreted the traditional telephone exchange definition to refer to 'the provision of individual two-way voice communication by means of a central switching complex to interconnect *all subscribers* within a geographic area.'"[42] And the FCC twice expressly stated in the Advanced Services Order that xDSL-based service permitted interconnection because a customer could reconfigure the service "to communicate with *any other customer*" located on the packet-switched network.[43]

The Directory Assistance Order relies upon the Advanced Services Order without explicitly or implicitly altering the treatment of intercommunication contained in the latter decision. When the FCC says, in the Directory Assistance Order, that the call completion feature of some DA services allows "an interconnected community of customers to make calls to one another,"[44] it is plainly referring to call recipients other than the DA service itself (the functional equivalent of the PSAP in this analysis).

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[40] *Id.* at 21.
[41] *Id.* at 23.
[42] Advanced Services Order, para. 20, (emphasis added), citing, among other cases, its post-1996 decision in Application of Bell South for Provision of In-Region, InterLATA Services in Louisiana, 13 FCC Rcd. 20599, 20621 (1998) ("Bell South Order").
[43] *Id.*, para. 24 & para. 25, fn. 61 (emphasis added).
[44] Directory Assistance Order, para. 17.

Consequently, the Commission does not agree with Intrado that "911 callers, PSAPs and first responders," Intrado IB at 14, constitute an interconnected community within the meaning of the FCC orders discussed here. We need not adopt AT&T's concept of the interconnected community - virtually *all* telephone subscribers in an exchange area (a effectively impossible standard for any carrier today) - to conclude that the interconnected community, for purposes of defining telephone exchange service, encompasses a more varied inter-customer communication than an inbound-only hub-and-spoke arrangement in which all calls must end with the hub PSAP (or another PSAP via call transfer).

This is not a question, as Intrado suggests (Intrado RB at 6), of whether intercommunication is limited to voice communication or whether non-traditional services or technologies can provide interconnection. The FCC decisions discussed here have already answered those questions. The real issue posed by the intercommunication requirement is whether telecommunications customers have access to a multiplicity of other customers of their own choosing within the exchange area. The x-DSL service in the Advanced Services Order and the call completion service in the Directory Assistance Order supply such access, while Intrado's 911 service does not.

Accordingly – and as we did with regard to call origination - the Commission will diverge from the result we reached with respect to intercommunication in the SCC Arbitration. In that docket, we said that "SCC transports a portion of an Emergency 9-1-1 call" and found that sufficient for intercommunication. SCC Arbitration at 6. There are important differences between that case and this one. Intrado has altered its array of services, the Directory Assistance Order was not analyzed in our 2001 Order and, as AT&T observes, our 2001 Order can be fairly read to have assigned to AT&T's predecessor the burden of proof and persuasion regarding intercommunication. AT&T IB at 14. Nonetheless, the Commission did say in the SCC Arbitration that transport of 911 calls constituted intercommunication and we expressly acknowledge that we are revising our position here. Transport of 911 calls from an ILEC's 911 tandem to a terminating PSAP, by itself, is not intercommunication under the Federal Act, as interpreted by the FCC. Unlike the call completion service in the Directory Assistance Order, terminating 911 transport does not interconnect a community. It delivers a single-purpose communication to a pre-designated termination point.

(c.) Service Within a Telephone Exchange or Connected Exchange System of the Character Ordinarily Furnished by a Single Exchange

Part A of the federal definition of telephone exchange service also requires "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge." With regard to the first clause in this quotation, the FCC said that "'exchange service' generally refers to service within local calling areas which is covered by an exchange service charge, as distinct from 'toll

service' between exchanges for which there is a separate additional charge."[45] In more common parlance, service within a telephone exchange is "local" calling.

The second clause in the quoted text refers to a group of exchanges that are treated like a single exchange, for reasons of public policy or local custom (often denominated as "extended [or expanded] area service"). In such circumstances, calls that traverse exchange boundaries within the connected group of exchanges are still "local."

The FCC also said that, "[t]he concept of an exchange area is based on geography and regulation, not equipment. An exchange might have one or several central offices."[46] Consequently, the FCC differentiates between local (telephone exchange) service and toll (exchange access) service by "looking to the end points of the communication,"[47] to determine whether they are in the same geographic unit. Thus, to constitute telephone exchange service, a service must enable calling from one point within the geographic exchange area to another point in that area.

Applying the foregoing principles to the xDSL service in the Advanced Services Order, the FCC determined that some xDSL traffic terminated locally (and was, therefore, telephone exchange service) and some did not (and was, therefore, classifiable as exchange access). Importantly, however, the fact that xDSL-based communications could fall into either category did not mean that ILECs were excused from the obligations imposed on them by subsection 251(c), including interconnection. Rather, *insofar as xDSL was terminated locally*, the FCC expressly found that the duties associated with local exchange service were applicable[48]. The FCC reiterated this principle in the Directory Assistance Order. The "ability [to provide exchange access] does not cancel or otherwise nullify the telephone exchange service that the DA provider has the ability to provide."[49]

Thus, even assuming for the sake of argument that Intrado's proposed 911 service would handle some calls that terminated beyond the local exchange area, the service would still constitute local exchange service (if it satisfied the other elements of the federal definition), *to the extent that* the service enabled local calling. There is no question that Intrado's 911 service will facilitate 911 calls that originate and terminate within the same exchange area. Indeed, 911 service is essentially local, since its core purpose is to link the caller to the responders that can most quickly and readily provide

[45] Advanced Services Order, para. 17, fn. 42.
[46] Bell South Order, 13 FCC Rcd. 20623, fn. 68.
[47] Advanced Services Order, para. 16.
[48] For clarity: in the Advanced Services Order, the principal proponent of the argument that xDSL is not telephone exchange service was an ILEC that provided xDSL. The ILEC did not want such service classified as either telephone exchange service or exchange service, so that the unbundling requirements of subsection 251(c)(3) would be inapplicable. Thus, the Advanced Services Order was not addressing the nature of a CLEC's competitive services and it was not about interconnection (except insofar as interconnection would be an additional ILEC obligation if xDSL constituted either telephone exchange service or exchange access).
[49] Directory Assistance Order, para. 19, fn. 54.

assistance. Thus, Intrado satisfies the "geographic" element in the federal definition of local exchange service, and it does not matter, in this context, that it might also facilitate 911 calling to PSAPs outside the local exchange area[50].

(d.) Exchange Service Charge

The federal definition of telephone exchange service additionally requires that the service within the pertinent exchange area be covered by the exchange service charge. This requirement is difficult to apply, because the FCC has not been entirely clear about its purpose or its contours. For example, in the Advanced Services Order, the FCC stated that the exchange service charge "comes into play only for the purposes of distinguishing whether or not a service is a local (telephone exchange) service, by virtue of being part of a 'connected system of exchanges,' and not a `toll' service."[51] To that extent, the FCC seems to conflate the exchange service charge component of the federal definition with the telephone exchange boundary component discussed in the preceding section of this Decision.

The FCC also said in the Advanced Services Order that "in a competitive environment, where there are multiple local service providers and multiple services, there will be no single 'exchange service charge.'"[52] This suggests that the exchange service charge component of the federal definition should be applied functionally, by including charges associated with a service that is equivalent to the service a subscriber receives for a traditional exchange service charge.

Applying the foregoing principles in the Advanced Services Order, the FCC concluded that an x-DSL charge constituted an exchange service charge, because "an end-user obtains the ability to communicate with the equivalent of an exchange area as a result of entering into a service and payment agreement with a provider of a telephone exchange service."[53] In the Directory Assistance Order, the FCC, relying expressly on the principles articulated in the Advanced Services Order, found that the per-call charge paid by an end-user for DA call completion was also an exchange service charge, primarily because call completion was "unquestionably local in nature."[54]

In the present case, Intrado's potential customers would be PSAPs, not end-users. Are the rates that an Intrado-served PSAP would pay for 911 service analogous to an end-user's exchange service charge? In light of the FCC's flexible treatment of the exchange service charge in the Advanced Services Order and the Directory Assistance Order, we conclude that Intrado's 911 service rates are analogous insofar as

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[50] In fact, Intrado would be entitled to interconnection under subsection 251(C)(2)(A) if it provided *both* telephone exchange service and exchange access. However, it expressly denies that it will offer exchange access, Tr. 109 (Spence-Lenss), and, as we hold above, it does not satisfy other elements of the federal definition of telephone exchange service.

[51] Advanced Services Order, para. 27. (The FCC reiterated this principle in the Directory Assistance Order, at para. 19.)

[52] *Id.*, para. 28.

[53] *Id.*, para. 27. (The FCC also repeated this principle in the Directory Assistance Order, at para. 19.)

[54] Directory Assistance Order, para. 19.

they would enable a PSAP to receive inbound local calls from points throughout an exchange area. The Commission thus distinguishes what the FCC described (in the Advanced Services Order and the Directory Assistance Order) as the "ability to communicate" - which a PSAP receives pursuant to its 911 service charge - from the intercommunication and call origination elements of the federal definition of telephone exchange service (which are not provided by Intrado's 911 service). Although limited to inbound calling, the PSAP's "ability to communicate" throughout an exchange is sufficient service for the "exchange service charge" under the FCC's analysis in the cited cases.

The Commission notes that our assessment of this element of the federal definition is largely abstract, since Intrado's recurring 911 service charges are only described summarily in the tariff in evidence here[55]. Consequently, the Commission cannot definitively determine that Intrado's proposed rates include a charge that is, in fact, analogous to an exchange service charge.

(e.) Comparison to AT&T'S 911 Service

In addition to its argument that its own proposed 911 service falls within the federal definition of telephone exchange service, Intrado emphasizes that AT&T's 911 service is much like Intrado's and is referred to in AT&T's tariffs as a "telephone exchange communication service." Intrado IB at 20. This is further proof, Intrado says, that its own service is telephone exchange service.

The Commission does not agree that the text in AT&T's tariff is significant or that it permits the inference Intrado makes. The tariff language and the federal definition, while similar, are differently worded and there is no apparent reason to assume that AT&T was trying to track the federal definition. Since "telephone exchange communication service" is not a statutory term in either Illinois or federal law, we accept AT&T's explanation that it is merely a functional description of the service[56].

A more substantial concern is whether AT&T's comparable 911 service enables either call origination or intercommunication. The tariff suggests it does not. Although it is a detailed document, the tariff (and the service it contemplates) can be fairly summarized (like Intrado's comparable 911 service) by one of its "Terms and Conditions" - "911 Service is furnished to the customer only for the purpose of *receiving* reports of emergencies from the public."[57]

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[55] AT&T Ex. 1, Sch. PHP-3, P.U.C.O., Tariff No. 1, Sec. 5, Orig. Page 11 ("Intelligent Emergency Network Rates and Charges"). In Intrado's Ohio tariff (which Intrado describes as similar to its Illinois tariff), the precise elements that comprise recurring services such as 911 Routing Service and ALI Management Services are not delineated. Moreover, these services are priced on an individual case basis. Also, the Commission cannot determine whether these services involve usage-sensitive pricing, but such pricing can properly be included within an exchange service charge. Bell South Order, 13 FCC Rcd at 20623.

[56] "[The AT&T tariff] refers to 'telephone exchange communication service' because it is a communication service that is offered in an exchange." AT&T RB at 14.

[57] Intrado Ex. 4 (Spence-Lenss), Attach. 3 (AT&T tariff, Ill. C.C. No. 20, Part 8, Sec. 3, 1st Revised Sheet No. 10, Sec. C ("Terms and Conditions"), sub. 2 (emphasis added).

Also, whether AT&T provides telephone exchange service is not dependent upon the nature of its 911 service. AT&T is an ILEC, and it unquestionably supplies telephone exchange service, apart from its 911 offerings. If, however, AT&T (like Intrado) proposed to provide *only* the 911 service described in its tariff, the Commission would presumably reach the same conclusion it reaches today concerning Intrado's 911 service[58].

(f.) The Pro-Competitive Policy in Applicable Law

More generally (as we noted earlier), Intrado has called upon this Commission to consider its arbitration Petition in light of the pro-competitive policies and intentions embedded in both federal and Illinois law. Additionally, Intrado stresses the critical importance of reliable 911 service, emphasizing the technological innovations Intrado's 911 service ostensibly includes. The Commission agrees with Intrado's view of applicable telecommunications and public safety policies, and we have no reason to doubt the quality of Intrado's 911 services (or, for that matter, the quality of AT&T's 911 services). The Commission is therefore receptive to statutory interpretation that advances the law's intentions and enhances public safety.

Nevertheless, the Commission is neither willing nor authorized to expand the specific provisions of the law beyond their apparent meaning. The Congress did not say that *any* market entrant is entitled to interconnection under subsection 251(c)(2). Rather, it described the entrants entitled to such interconnection with particularity. Irrespective of this Commission's interest in expanding competition, we cannot exceed the limits established by the Congress.

The Commission observes that Intrado chose its business model with full knowledge of the Federal Act. Its efforts to obtain interconnection under the Federal Act for that business model have not been entirely successful, at least thus far. It may occur that Intrado will modify its business plan to obtain interconnection more readily. It may also occur that the FCC, whether in its own right or through its Wireline Bureau, will construe the Federal Act differently than we do here. In either case, this Commission would certainly consider another interconnection request with those new circumstances in mind. Today's result is limited to the record in this particular case and the current state of the law, including the absence of an FCC ruling regarding the status of stand-alone 911 service as "telephone exchange service."

[58] Indeed, AT&T states (albeit for purposes of this litigation) that its 911 service is not a telephone exchange service. AT&T RB at 15.

(g.) Commission Discretion to Arbitrate

As an alternative to its preferred outcome (rejection of Intrado's request for interconnection under subsection 251(c)(2)), AT&T contends that the Commission has discretion under the Federal Act to decline to entertain Intrado's interconnection Petition. AT&T IB at 14. Intrado disagrees. Intrado RB at 13, fn. 62. AT&T does not cite authority expressly conferring discretion on the state commissions. Instead, AT&T apparently relies on what it believes to be the absence of compulsory language in subsection 252(b) of the Federal Act (even though the title of that subsection is "Agreements Arrived at Through Compulsory Arbitration"). However, AT&T overlooks subsection 252(b)(4)(C), which provides that "[t]he State commission *shall* resolve each issue set forth in the petition and the response...and *shall* conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section." (Emphasis added). "Shall" is a compulsory term in a statute. It precludes discretion with regard to what "shall" be done. Unless there is precedent from the FCC or a superior court that interprets the Federal Act differently on this point (and AT&T has not cited any), the Commission cannot decline to consider Intrado's Petition.

That said, the Commission recognizes that the State Corporation Commission of Virginia "deferred" Intrado's comparable interconnection petitions in that state to the FCC[59]. The Virginia Commission concluded that the FCC was "the more appropriate agency" to determine the threshold issue of Intrado's right to interconnection under Section 251[60]. That commission cited a Virginia statute that apparently provides discretion to defer arbitration issues. It is not clear how a state statute trumps the mandatory federal provision quoted above, but, in any event, the Virginia Commission dismissed the petitions there (an action that arguably constitutes the resolution of issues contemplated by subsection 252(b)(4)(C)). After dismissal, Intrado successfully petitioned the FCC, under subsection 252(e)(5) of the Federal Act, to assume preemptive jurisdiction of Intrado's Virginia interconnection petitions, on the ground that the state commission had "fail[ed] to carry out its [arbitration] responsibility," as subsection 252(e)(5) stipulates. The FCC's Wireline Competition Bureau issued orders preempting the Virginia Commission[61].

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[59] *E.g.*, Petition of Intrado Comm. of Virginia Inc. for Arbitration to Establish an Interconnection Agreement with Central Telephone Co. of Virginia d/b/a Embarq and United Telephone-Southeast, Inc. d/b/a Embarq, under Sec. 252(b) of the Telecommunications Act of 1996, Order of Dismissal, Feb. 14, 2008.

[60] *Id.*, at 2. Although the Virginia Commission focused on the threshold issue of Intrado's interconnection rights, it deferred to the FCC all of the issues presented by the arbitrating parties.

[61] The procedural history of the FCC's preemption of Intrado's Virginia petitions is summarized in the Wireline Competition Bureau's December 9, 2008 Order that consolidates Petition of Intrado Comm. of Virginia Inc. Pursuant to Sec. 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Co. of Virginia and United Telephone-Southeast, Inc., FCC WC Dckt. 08-33, and Petition of Intrado Comm. of Virginia Inc. Pursuant to Sec. 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc., FCC WC Dckt. 08-185.

We will not defer this proceeding to the FCC. As stated above, this Commission does not possess the authority to refrain from resolving the issues framed by the parties. Intrado's Virginia arbitrations were preempted by the FCC pursuant to Intrado's petitions under subsection 252(e)(5), and we assume that deferral by us would be similarly regarded as a failure to arbitrate. Moreover, we believe that, like the Florida Commission, we have correctly interpreted and applied the Federal Act by concluding that Intrado's proposed 911 service is not telephone exchange service within the meaning of the federal definition. And since the Virginia Commission's deferral has already caused that threshold issue to be presented to the FCC, deferral by this Commission would add nothing to the process of discerning the Federal Act's meaning. The FCC's Wireline Competition Bureau will issue a decision and it will resonate among the state Commissions (including this one)[62]. Furthermore, by issuing a final arbitration decision, we enable Intrado to seek review in the federal District Courts under subsection 252(e)(6), thereby obtaining additional federal guidance on the meaning of the Federal Act.

(h.) Summary – "Telephone Exchange Service"

Intrado's 911 service is not telephone exchange service within the meaning of the federal definition in §153(47). It does not enable its PSAP customers to originate calls, as required by Part B of that definition. It does not facilitate intercommunication, whether by its PSAP customers or by the end-users initiating emergency calls, as required by Parts A and B of that definition. It does provide service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area (even if it also provides service beyond an exchange area). It appears to furnish service under an exchange service charge (although the precise nature of its recurring charges cannot confirmed by the evidentiary record). Based on the foregoing conclusions, the Commission resolves this issue as AT&T recommends, concluding that AT&T has no duty to interconnect with Intrado under subsection 251(c)(2) of the Federal Act.

Issues 2-5, 7-12, 15, 17-18, 22-29, 33-36

The Commission resolved Issue 1, above, with the finding that AT&T has no duty to interconnect with Intrado pursuant to subsection 251(c)(2) of the Federal Act, because Intrado's proposed 911 service is not "telephone exchange service" within the meaning of the federal definition at 47 USC §153(47). Accordingly, no mandatory ICA will emanate from this arbitration. It necessarily follows that the ICA terms proposed by the parties in connection with the other issues in this proceeding cannot be approved. Therefore, in order to implement subsection 252(c)(1) of the Federal Act, which

[62] When the FCC preempts a state arbitration under subsection 252(e)(5), it "assume[s] the responsibility of the State Commission...and act[s] for the State Commission," not in its own right. Moreover, decisions are rendered by the FCC's Wireline Competition Bureau, rather than by the FCC Commissioners. Nevertheless, the Bureau's decisions are accorded considerable persuasive weight and frequent citation by the state commissions. Thus, with a successful outcome before the Bureau, Intrado would presumably re-petition for interconnection in states that had rejected its original request.

mandates that our resolution of open issues "meet the requirements of Section 251," the Commission resolves each of the other issues in this arbitration with the finding that no proposed ICA language is consistent with the requirements of Section 251, since no ICA is required under subsection 251(c)(2). All disputes regarding proposed ICA terms have been rendered moot and superfluous by our resolution of Issue 1.

V. STAFF'S REQUEST FOR A GENERIC PROCEEDING

Staff requests a Commission directive to prepare a report and draft order initiating a generic proceeding for issues relating to competitive 911 service. Staff asserts that this arbitration "raises issues that implicate the rights and interests of numerous entities" outside the case. Staff IB at 36. Presumably, Staff is principally referring to the PSAPs and ETSBs that manage and fund the 911 system. Staff's testimony suggests some of the issues that might be constructively addressed in a generic proceeding (such as modification of existing ETSB system planning), and posits further that 83 Ill. Adm. Code 725 might need to be revised to accommodate competitive entry for 911 service. Staff Ex. 3 (Schroll).

Staff's interest in a comprehensive approach to 911 competitive entry is patently sensible. But the Commission cannot discern whether Staff's request would survive this Arbitration Decision, which concludes that AT&T does not have a duty to interconnect with Intrado under subsection 251(c)(2) of the Federal Act. Would Staff still propose a generic proceeding, in view of this Decision? Will Intrado (or other potential 911 telecommunications services providers) elect to enter into an agreement outside of subsection 251(c)(2) in order to facilitate 911 service? If not, are the relevant stakeholders, particularly the ETSBs, interested in a generic proceeding?

Instead of presuming to answer the foregoing questions, the Commission will leave it to Staff's discretion to determine, in light of this Decision, whether to prepare a report on 911 competitive entry and request a generic docket.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Intrado has petitioned this Commission for arbitration under subsection 252(b) of the Federal Act, for the purpose of executing an Interconnection Agreement with AT&T;

(2) the Commission has jurisdiction of the parties hereto and the subject matter hereof;

(3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;

(4) Intrado's proposed 911 service is not telephone exchange service within the meaning of §153(47) of the Federal Act; therefore, AT&T has no duty under subsection 251(c)(2) of the Federal Act to interconnect with Intrado and Issue 1 herein should be resolved accordingly;

(5) based on Finding (4), above, no interconnection agreement should be required under subsection 251(c)(2), and all other issues presented in this proceeding (Issues 2-5, 7-12, 15, 17-18, 22-29, 33-36), which pertain to the terms and conditions to be included in such an agreement, should be resolved by declaring them superfluous and moot.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Issue 1 in this arbitration shall be resolved by determining that Intrado's proposed 911 service is not telephone exchange service within the meaning of §153(47) of the Federal Act and that, therefore, AT&T has no duty under subsection 251(c)(2) of the Federal Act to interconnect with Intrado.

IT IS FURTHER ORDERED that Issues 2-5, 7-12, 15, 17-18, 22-29, 33-36 shall be resolved by determining that no interconnection agreement between Intrado and AT&T is required under subsection 251(c)(2), and that, therefore, those issues are superfluous and moot.

DATED: February 13, 2009
BRIEFS ON EXCEPTIONS DUE: February 20, 2009
REPY BRIEFS ON EXCEPTIOND DUE: February 27, 2009

David Gilbert,
Bonita Benn,
Administrative Law Judges